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Supreme Court of the United States

OCTOBER TERM, 1958

No. 853

UNITED MINE WORKERS OF AMERICA,
Petitioner,

v.

MEADOW CREEK COAL COMPANY, INC.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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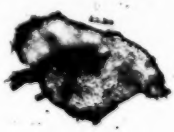
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MEADOW CREEK COAL COMPANY, INC.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, United Mine Workers of America (herein called "UMW") prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit[1] entered on January 21, 1959, in Case No. 13,470, styled *United Mine Workers of America, Appellant,* v. *Meadow Creek Coal Company, Inc., Appellee,*[2] wherein said Court affirmed the judgment of the United States District Court for the Middle District of Tennessee[3] entered November 5, 1957, ordering that Meadow Creek recover of petitioner the sum of Four Hundred Thousand Dollars ($400,000.00), with

[1] The United States Court of Appeals for the Sixth Circuit will be referred to herein either as the "Court of Appeals" or "Sixth Circuit."

[2] Meadow Creek Coal Company, Inc. will be referred to herein as "Meadow Creek" or "Company."

[3] United States District Court for the Middle District of Tennessee will be referred to herein as the "district court" or the "trial court."

costs, consisting of compensatory damages of Three Hundred Thousand Dollars ($300,000.00) and punitive damages of One Hundred Thousand Dollars ($100,000.00) (R. 44-5),[4] as well as the judgment and order of said Sixth Circuit entered February 23, 1959, denying to petitioner a timely filed petition for rehearing in said case (A. 32).[5]

A certified appendix record in said case, together with the proceedings in the Sixth Circuit, is furnished herewith in accordance with this Court's rules.

OPINION BELOW

The Sixth Circuit's opinion appears in the Appendix hereto at page 14 *et seq.*; in the certified record and it is reported in 263 F. 2d 52 (Adv. Op. March 23, 1959).

JURISDICTION

The Sixth Circuit's judgment affirming the trial court's judgment, as aforesaid, was entered January 21, 1959 (A. 32), while the Sixth Circuit's judgment and order denying petitioner's petition to rehear was entered February 23, 1959 (A. 32). This Court's jurisdiction is invoked under 28 U.S.C., Sections 1254(1) and 2101(c).

BASIS FOR FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT

The basis of jurisdiction in the District Court, as the complaint alleged, was "under Title 29 USCA, 187 (the Labor-Management Relations Act),[6] and also invoked under Title 28, USCA, Sections 1331, 1332, and 1337" (R. 7).

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[4] The abbreviation "R." refers to the printed, certified record of the Sixth Circuit filed in the Supreme Court of the United States. References to page numbers therein will omit the letter "a".

[5] Abbreviation "A." refers to the Appendix to this Petition. References to page numbers therein will omit the letter "a".

[6] The Labor Management Relations Act, 1947, will herein be referred to as the "Act" or "Taft-Hartley".

QUESTIONS PRESENTED

1. In an action by an employer against a labor union for damages allegedly sustained by reason of an organizational strike of six months' duration which occurred in Tennessee, wherein jurisdiction of the federal district court was based upon Section 303 of the Labor-Management Relations Act, 1947 (29 U.S.C. 187), and wherein the company contended that certain actions which occurred during the strike constituted violations of said Section 303 on the part of the labor union and that the entire strike and course of conduct of the labor union relative thereto constituted an unlawful interference with the company's business under the common law of Tennessee, did the district court, having in effect held that there was no violation of the federal Act, have jurisdiction to determine the common law or non-federal cause of action?

2. In an action brought in the United States District Court by an employer against a labor union for damages alleged to have been sustained by reason of a labor dispute in which the labor union had an interest, wherein jurisdiction is predicated upon Section 303 of the Labor-Management Relations Act, 1947, and liability was claimed by reason of alleged violation of such federal statute and the common law of Tennessee, may the labor union be held liable under the common law or non-federal cause of action in the absence of clear proof of actual participation in, or actual authorization of, the acts complained of, or of ratification of such acts after actual knowledge thereof on the part of the labor union as provided for in Section 6 of the Norris LaGuardia Act (29 U.S.C. 106)?

3. Under applicable law, is there sufficient evidence to support the district court's award of compensatory

damages in the amount of $300,000.00, and the Sixth Circuit's approval thereof?

4. Under applicable law, is the evidence sufficient to justify the district court's award of punitive damages of $100,000.00, and the Sixth Circuit's approval thereof?

5. Under applicable law, is there sufficient evidence in the record to support the findings of the district court, and the Sixth Circuit's approval thereof, that the defendant labor union undertook to accomplish its objective by improper and unlawful means consisting of harassment, violence and threats of violence against the plaintiff, its employees and customers, and other persons doing business with it, and that the conduct of the union constituted an unlawful interference with the plaintiff's business in violation of the plaintiff's rights under the common law of the State of Tennessee?

6. Under applicable law, is there sufficient evidence in the record to support the district court's findings, and the Sixth Circuit's approval thereof, that

(a) defendant is responsible and liable for the dynamiting of the railroad switch of the Tennessee Central Railroad Company on June 23, 1948, and

(b) defendant labor union was responsible and liable for the acts of one of its members, Willard Clemons?

7. Where it appears that strike benefits in the form of groceries and merchandise were furnished to members of the defendant labor union who were unemployed because of an organizational strike, may liability for losses sustained by the company as a consequence of such strike be predicated, in whole or in part, thereon?

8. In an action by an employer against a labor union for damages alleged to have been sustained by reason of an organizational strike, it being contended that incidents which occurred during such strike constituted violations of Section 303 of the Labor-Management Relations Act, 1947, and that such strike and the occurrences incident thereto constituted an unlawful interference on the part of the union with the business of the employer under the common law of Tennessee, which action was commenced more than three years after the accrual thereof, is the Tennessee three-year statute of limitations (Section 28-305, Tennessee Code Annotated) applicable to the non-federal cause of action?

STATUTES INVOLVED

The pertinent statutory provisions involved are Section 303, subsections (a)(1), (a)(2), (a)(3) and (a)(4), and subsection (b), and Section 301(e), of the Labor-Management Relations Act, 1947 [29 U.S.C., Section 187, subsections (a)(1), (a)(2), (a)(3) and (a)(4), and subsection (b) and 185(e)]; Sections 4(c), 6, and 13(a) and (b) of the Norris-LaGuardia Act [29 U.S.C., 104(c), 106, 113(a) and (b), 47 Stat. 70, 71, 73]; Section 20 of the Clayton Act (29 U.S.C., Section 52, 38 Stat. 738); and Tennessee Code Annotated, Section 28-305 and Section 28-310. These statutory provisions are set forth in Appendix IV hereto.

STATEMENT OF THE CASE

1. Kind of Action, Pleadings, and the Judgment.

Charging UMW with violating the Act's Section 303, as well as "unlawful conspiracy . . . to maliciously, wantonly and willfully interfere with" contracts between Meadow Creek and its employees, customers and others,

in connection with efforts of District 19, UMW,[7] to organize Meadow Creek's employees in 1947 and 1948, that Company, on February 12, 1954, instituted action to recover from UMW compensatory damages of $750,000.00 and punitive damages of $500,000.00.

By its original complaint and amendments thereto,[8] Meadow Creek, a coal mining operation near Monterey, Tennessee,[9] complained that UMW, through its representatives, brought a group of men to Meadow Creek's mine on January 12, 1948;[10] that this group would not allow the employees to leave the premises and threatened them; that UMW representatives and members "exhorted them to join" UMW and "not to return to work until a union was organized" at the mine and a contract signed by Meadow Creek designating UMW as collective bargaining representative of the Company's 169 employees, all at a time when UMW had not been certified as such employees' representative under the Act's Section 9 and no contractual relationship between Meadow Creek and UMW existed; and that as a result thereof Meadow Creek's mine was closed and remained closed until April 17, and UMW "by its unlawful actions, completely destroyed this mining business and plaintiff was never able to re-establish this business" (R. 7-9, 25).

The complaint charges also that to force Meadow Creek to recognize and bargain with UMW, employees were intimidated and bribed by UMW to keep them from

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[7] Herein called "District" or "District 19."

[8] The original complaint is found at page 7 of the printed record; while amendments thereto are found at pages 12, 22, 24-26. Unless otherwise indicated, use of the word "complaint" includes the amendments thereto.

[9] The complaint alleged (R. 7), and answer thereto admitted (R. 18) that Meadow Creek's business affected commerce within the meaning of the Act's Section 303.

[10] Unless otherwise indicated, all dates refer to the calendar year 1948.

returning to work and "to attempt to get them to join" UMW, in violation of the federal statutory law (R. 9).

In addition, Meadow Creek charged that UMW had violated the Act by secondary boycott activities in that before and after January 12, UMW, its representatives, agents and servants

> (1) induced or encouraged Tennessee Central Railroad Company's employees "to engage in a concerted refusal to transport or otherwise handle" Meadow Creek's goods, and
>
> (2) intimidated Meadow Creek's customers' truck drivers and created widespread fear and tension throughout the coal fields, causing the truck drivers and others "to engage in a concerted refusal to transport or otherwise handle" Meadow Creek's goods,

the object thereof being to force or require the Railroad Company and the truck drivers' employers and others to cease handling and transporting Meadow Creek's products and to cease doing business with it (R. 24-25).

Meadow Creek claimed damages, both compensatory and punitive, "by reason of the violation of these statutes" and for "unlawful conspiracy . . . to maliciously, wantonly and wilfully interfere with the contracts of employment" between Meadow Creek and its employees, customers and others (R. 10-11).[11]

Two written UMW motions to dismiss (R. 13, 23) and an oral motion, at the conclusion of Meadow Creek's evidence in chief (R. 575), were denied (R. 17, 27).

[11] The claim for damages based upon alleged violation of the Act is found in the original complaint's paragraph 16 (R. 10-11), while the claim for damages for unlawful conspiracy is found in the original complaint's paragraph 17 (R. 11).

UMW's answer (R. 17), as amended (R. 28, 30), admitted that Meadow Creek's employees were persuaded to and did engage in a strike, but denied the material allegations of the complaint including those which charged UMW with the commission of unlawful conduct, and denied liability to Meadow Creek or that Meadow Creek had sustained any damages as a result of any activities of UMW (R. 17-21).

The district court tried the action in lieu of a jury, and by its Findings of Fact and Conclusions of Law,[12] held UMW liable and, on November 5, 1957, entered judgment against UMW in Meadow Creek's favor for $300,000.00 of compensatory damages and $100,000.00 of punitive damages (A. 13). Upon timely appeal (R. 46), the Sixth Circuit affirmed (A. 32).

2. The Issues and How They Were Decided.

a. The issue of jurisdiction of the action.

UMW contended (R. 575) the district court was without jurisdiction of the action because (1) lack of proof that the Act had been violated and (2) the complaint asserted two separate causes of action: one, an alleged violation of common law rights and, two, a violation of the Act; and since the action had failed "as far as Taft-Hartley is concerned, it leaves alone the one based on its state right of action with which this Court is not vested with jurisdiction", there being no diversity of citizenship (R. 575).

Disagreeing, the district court, following the introduction of all the evidence, concluded (R. 42) that on "the basis of the pleadings and the entire evidence," Meadow Creek's claim of secondary boycott under the Act's Sec-

[12] R. 31-44; A. 1-12.

tion 303, "raises or presents a substantial federal question, and consequently the Court has jurisdiction to adjudicate such claim"; that the "material and operative facts supporting the plaintiff's federal claim of secondary boycott are substantially the same as the facts supporting its non-federal or state claim of an unlawful conspiracy to injure its business"; that the "claim of secondary boycott and unlawful conspiracy are not separate causes of action but are merely different grounds to support a single cause of action, the cause of action being the violation by the defendant of the plaintiff's right to be free from wrongful interference with its business, and that by reason thereof the Court has jurisdiction of the non-federal claim of unlawful conspiracy to injure the plaintiff's business, under the doctrine of *Hurn* v. *Oursler*, 289 U. S. 238 . . ."[13]

The Sixth Circuit was accordant with the district court's conclusion, finding and declaring that upon the facts found by the district court "we think that this case presents only a single cause of action; that the claim of secondary boycott and unlawful conspiracy are not separate causes of action, but merely different grounds to support a single cause of action", declaring *Hurn* determinative of the issue (A. 23).

b. The issue of standard of responsibility.

In its Conclusions of Law, the district court declared UMW responsible "for the acts and conduct of its agents, servants and representatives, in accordance with the general rules governing the relationship of master and servant or principal and agent" and that UMW "is clearly shown to have been directly responsible for the conduct which brought about the wrongful closing" of Meadow

[13] Other citations included were *American Fidelity and Casualty Co.* v. *Owensboro Milling Co.*, 6 Cir., 222 F. 2d 109; *Wertanen* v. *Welduction Corp.*, Dist. Court, Eastern Dist. of Michigan, 151 F. Supp. 440.

Creek's mine "and wrongful interference with its business to such extent as to make" UMW legally liable therefor (R. 43). UMW contended that liability of the alleged common law cause of action had to be determined in accordance with the rule of Section 6 of the Norris-LaGuardia Act (29 U.S.C 106) and not under the definition of agency set forth in the Act. Citation of *UMWA* v. *Patton*, 4 Cir., 211 F. 2d 742 by the district court made it clear that it relied on the rule of the Taft-Hartley Act.

The Sixth Circuit, rejecting UMW's contention, answered that (A. 30)

> "the facts as found by the trial judge, based on substantial evidence, are that the operations of Ridings, international board member of appellant, and several of its other international representatives, were definitely either authorized by"

UMW,

> "or ratified by it after obtaining actual knowledge of the unlawful acts perpetrated",

and that UMW's purpose

> "in organizing and directing the march on appellee's mine was, by force and violence, to close its operation until appellee should sign a labor contract with"

UMW, and that

> "Indeed, Ridings, who was general director of the activities of the mob of marchers and the other union members who participated in the unlawful acts, was high enough in the hierarchy of the United Mine Workers of America to render that organization liable for the consequences of conduct of its members under his general leadership." (A. 30).

c. The issue of compensatory damages.

UMW contended that there was total absence of proof warranting an award of compensatory damages, that

there was no evidence of loss of profits, that the compensatory damage award of $300,000.00 was necessarily speculative and that, even if compensatory damages were warranted (which UMW denied), the award of $300,000.00 was excessive. Predicated upon "the whole record and in the light of the entire evidence", the district court found that UMW's unlawful conduct in closing Meadow Creek's mine "by force of a large mob, by threats, by acts of violence and other wrongful means, *directly caused" the company "to suffer damages to its business for the year 1948, principally for the first half of that year"*, and that based upon the company's business and profits for 1947, prospects for increased business and lower costs in 1948, its contracts, prevailing general conditions in the industry "and the entire record", a fair amount to compensate Meadow Creek for its losses is $300,000.00 (R. 41-42, A. 10). The Sixth Circuit was of the opinion that "there was adequate substantial evidence to support the award of $300,000.00 compensatory damages for the wrongs and injuries inflicted" upon Meadow Creek's business by UMW (A. 31) which the trial court included in its conclusions (A. 12).

d. The issue of punitive damages.

The district court found that UMW, "in closing the plaintiff's mine and in keeping it closed, by force, by threats of bodily harm, and by acts of violence, and in conspiring with its members to accomplish the same purpose, acted wilfully and wantonly and with the intent to damage the plaintiff's business" (R. 40, A. 9), and concluded that by reason of such wilful and malicious conduct Meadow Creek was entitled to recover punitive damages of $100,000.00, which it included in its judgment (R. 45, A. 12, 13). Rejecting UMW's contention that the district court was not justified in awarding

such damages, growing out of a labor dispute in an action commenced more than six years after its occurrence, and that in any event the district court erred in awarding punitive damages in the enormous sum of $100,000.00, the Sixth Circuit was of opinion that it was within the district judge's sound discretion to award that amount as punitive damages (A. 31).

e. The issue of liability.

In addition to imputing to UMW responsibility for the dynamiting and the conduct of Willard W. Clemons (*post*, pp. 29-32) and finding that in furnishing groceries and supplies to striking members UMW kept the employees from returning to work (*post*, p. 15), the district court found defendant, pursuant to a conspiracy to close down Meadow Creek's mine by force (A. 2-3), blockaded Meadow Creek's private road; would not allow customers to enter the property; that some of the group were armed and intercepted employees, and by persuasion and threats of bodily harm to them and their families sought to get them to join UMW (A. 3); that union representatives made speeches in which they told those assembled that Meadow Creek's mine would not run another day unless it signed a UMW contract (A. 3); that because of the mob's action in trespassing Meadow Creek's property and threatening its employees and officers, Meadow Creek was unable to resume mining (A. 3-4); that UMW's purpose "in organizing and directing the march" on Meadow Creek's mine "was to close its operation by force and to keep it closed until" Meadow Creek signed a UMW contract (A. 4); that trucks were prevented from entering Meadow Creek's property on January 12 and told by UMW members not to come back until a contract was signed; that drivers and owners of trucks doing business with Meadow Creek were placed in fear of harm and

would not return for coal until a contract was signed with UMW in July, 1948 (A. 6); and that in closing the mine and keeping it closed by force, by threats of bodily harm and violence, and in conspiring with its members to accomplish the same purpose, UMW "acted wilfully and wantonly and with the intent to damage" Meadow Creek's business (A. 9).

The district court concluded that the "acts and conduct" of UMW "as set forth in the Findings of Fact"[14] above constitute an unlawful interference with the plaintiff's business, in violation of the plaintiff's rights under the common law obtaining in Tennessee, thereby entitling the plaintiff to recover damages proximately resulting therefrom" and that the "means employed" by UMW "to accomplish its purpose were improper and unlawful, consisting of harassment, violence and threats of violence" against Meadow Creek, its employees, customers, and other persons doing business with it, the effect of which "was to drastically interfere with and curtail production of coal" at Meadow Creek's mine during 1948 (A. 11). Contrary to UMW's contention of legality of object in inducing the employees to strike, as well as the propriety of the means used, the Sixth Circuit concluded that the district court's separate Findings of Fact were "all supported by substantial evidence and not clearly erroneous" and that

> "In view of the substantially supported findings of fact of the district court, . . . it would seem unnecessary to labor the point that there appears adequately sufficient evidence in the record to support the findings of the court that appellant set out by violence and threats of violence against appellee, its employees and customers, to accomplish its objective of 'organizing' appellee's mine",

[14] The district court's Findings of Fact consist of 41 findings (A. 1-10).

and that

> "Such conduct constituted an unlawful interference with appellee's business, in violation of the common law of Tennessee." (A. 29).

The Sixth Circuit declared that it

> "has no right to set aside findings of fact, either of the jury in an action by the employer against a labor union for damages caused by secondary boycott, or of a trial examiner in a National Labor Relations Board proceeding to enforce its cease and desist order against the employer, though such findings are inconsistent, if they are supported by substantial evidence on the record considered as a whole in each proceeding" (A. 31).[13]

f. The issue of imputing to UMW responsibility for alleged conduct of UMW members.

(1) Finding that a portion of the Tennessee Central Railroad Company's railroad track was destroyed by a dynamite explosion, occasioning the arrest of two UMW members, who were visited by union representatives while they were in jail, that the representatives carried to them cigarettes and things to eat, and that UMW's Ridings (after the strike ended) requested that prosecution of the union members be dropped, and although there was no prosecution, the district court declared that "From all of the circumstances . . . it is a reasonable conclusion that" UMW is responsible for such dynamiting, and concluded the incident to be one of the acts and conduct constituting the unlawful interference with Meadow Creek's business and entitled it to recover damages from UMW (R. 43, A. 7).

UMW asserted that there was neither union agency

[13] The Sixth Circuit referred to its previous holding in *United Brick and Clay Workers* v. *Deena Artware*, 6 Cir., 198 F. 2d 637, 642.

nor union ratification of the dynamiting, even if the union members had been found guilty thereof. The Sixth Circuit, disagreeing, referred to the dynamiting incident as "Another consequential incident . . . related by the district court in its findings" (A. 19).

(2) Although Willard W. Clemons was not an UMW employee or official and acted under no orders from any UMW official, and testified thereto as a Meadow Creek witness, the district court nevertheless attributed to UMW his conduct in stopping three Tennessee Coal employees, while armed, and berating them, because of the payment by the District of $5,000.00 to Clemons about two years following the strike's termination for injuries received by Clemons when he was wounded by a brother of one of the three men stopped on their way to work at the Meadow Creek mine. UMW contended that it was not responsible for Clemons' unauthorized act and that payment of the money for the injuries did not constitute a ratification of such unauthorized conduct. The district court concluded that the Clemons incident was one of the acts and conduct constituting unlawful interference entitling Meadow Creek to recover damages; and the Sixth Circuit appraised the incident as "relevant" (R. 39, 40,[16] A. 20).

g. The issue of UMW's liability based upon strike benefits furnished to union members unemployed because of the strike.

The district court found that between January 12 and July 13, when the UMW contract was executed, defendant paid for groceries and other merchandise supplied by merchants to Meadow Creek's employees who had refused to return to the mine for work, in an amount in excess of $70,000.00. The district court found that this

[16] Findings 31 and 34 (A. 7, 8-9).

money was paid by UMW to keep the employees from returning to work for plaintiff, and employed such findings as part of the acts and conduct constituting the unlawful interference by UMW with Meadow Creek's business (R. 39, 40, 43).[11] Although UMW asserted that the district court's holding was not supported by the common law of Tennessee and was repugnant to the Clayton Act's Section 20 (29 U.S.C. 52) and Norris-LaGuardia's Section 4(c) [29 U.S.C. 104(c)], the Sixth Circuit noted merely the facts relating to the issue, and while it made no comment thereon, it approved the district court's various findings (A. 24-5).

h. The issue of statute of limitations.

In its answer, UMW asserted (R. 30), that Meadow Creek's alleged cause of action was barred by Tennessee's three-year statute of limitations (Tennessee Code Annotated, Section 28-305). The district court (R. 43) held that the ten-year statute of limitations of Tennessee and not the three-year statute applied to the present case and the action was not barred; and the Sixth Circuit agreed (A. 29).

3. The Facts

a. The issue of liability.

In October, 1946, District 19, UMW, engaged in organizing nonunion coal mines in Putnam County, Tennessee, and counties adjacent thereto (R. 184, 580-1). District's President Abe Vales placed in charge of the organizing campaign J. W. Ridings (R. 185), a member of UMW's Executive Board (R. 181, 579). Associated with Ridings in this original activity were Hugh Brown and Harvey

[11] Findings 32 and 33, and Conclusion of Law 5 (A. 8, 11).

Bell,[18] both UMW representatives, and Ernest Stultz, District representative (R. 181-2).[19] All work assignments were made by District's president (R. 182).

Meadow Creek's mining operations, interstate in character (R. 49), were located in Putnam County, Tennessee; and in August, 1947, a local union charter was granted by UMW for the Meadow Creek employees as Local 8990 (R. 581). Meadow Creek employees numbered 169 (R. 55); and prior to January 12 approximately 100 of such employees had signed and delivered UMW membership application cards (R. 553-559).[20] On January 9, Ridings and Brown, at a meeting with Meadow Creek's owner, William T. Ray, advised Ray that a "substantial majority" of the employees had "signed up" with UMW (R. 57, 582). According to Ridings, he and Brown told Ray "we were anxious to get a contract for" Meadow Creek's employees (R. 268, 582), to which Ray responded he was not interested at that time (R. 582). While Ray's version is that nothing was stated about "the signing of a contract" (R. 57), he admitted he knew that some of the employees had joined UMW (R. 127), as well as his retort to the claim of "a substantial majority" that if his men desired UMW affiliation he "would be glad to talk to them" and that his "door was open to any man any time" (R. 57), and to "let them come in and ask for [an UMW

[18] Both Vales and Brown were dead at the time of the trial herein (R. 181).

[19] Despite the undisputed evidence that Stultz was a District representative, the trial court found him to be "an International Representative of District 19" (R. 32-33), and the Sixth Circuit, contrary to established fact, recites in its opinion that UMW had sent him in to Tennessee to organize (A. 15).

[20] L. H. Bell, a Meadow Creek witness, on cross examination testified that "upwards of around a hundred" of the 169 employees had accepted UMW membership (R. 553) prior to January 12 (R. 556); yet the Sixth Circuit, without testimonial support, stated that the union organizers "failed to interest a majority" of the employees (A. 15). See the trial court's finding 6 to the same effect (R. 33).

contract] and I would answer them immediately and promptly" (R. 128), though agreeing that he did not tell Ridings and Brown or suggest to them he was agreeable "to have an election by card count or any other manner" (R. 128).[21]

For some time prior to January, 1948, wages paid by Meadow Creek to its employees were considerably less than those called for under UMW collective bargaining agreements.[22] More than a majority of Meadow Creek's employees lived "in some two or three places", and it was decided to hold a meeting at the mine, which was typical of meetings held in the organizing campaigns (R. 640), to afford UMW membership an opportunity to talk to those of the Meadow Creek employees who had not joined UMW (R. 640) and to encourage Meadow Creek employees to refuse to work without a union contract (R. 640-1).

The January 12 meeting

On January 12 a group of UMW members working at mining operations other than Meadow Creek met in Sparta, Tennessee, where employees of a shirt factory were engaged in a strike to gain recognition for District 50, UMW. This group, estimated variantly from 100 to 300 persons,[23] which included Ridings and Brown, after

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[21] This recalcitrant employer attitude, not disputed, is not mentioned in either the trial court's findings and conclusions (R. 31-44) or the Sixth Circuit's opinion (A. 14) and obviously neither court gave it any consideration.

[22] Meadow Creek's scale was a daily rate of $11.00 or less (R. 798), as compared with $13.05 paid under UMW agreements. On a tonnage basis Meadow Creek paid 70¢ for coal actually loaded, 10¢ for cutting, and 5¢ for shooting and drilling, while under UMW contracts the tonnage rate was 78¢ per ton, plus one-ninth thereof, plus $3.05 per day. UMW contracts also provided vacation pay and for the payment of 10¢ per ton by coal operators to the Trustees of the UMWA Welfare and Retirement Fund (R. 123, 891, 993-1003 [P. Ex. 19]).

[23] R. 118, 187, 198, 306, 371, 402, 478, 725, 807-8, 816.

remaining in Sparta for about three hours, drove through Monterey to the Meadow Creek mine, arriving there shortly after 2:00 p.m.[24] The group parked their cars, estimated at 60 or more.[25] While Meadow Creek witnesses contended that the road was blocked (R. 115, 401), and one such witness attributed to an unidentified "stranger" the statement that "he had orders to keep the road blocked" (R. 402),[26] two admitted that when each asked that a car be moved to "let me out", his request was honored (R. 117, 403, 422); another admitted he had no trouble in driving up to where the group had gathered and that while "it was a pretty close drive", he was not blocked (R. 342); and a third witness related that he "eased right on through them" without asking anyone to move any cars and without running over anyone (R. 377). Sheriff Higgenbotham, whose presence was at Ridings' invitation to "see there wasn't any disturbance" (R. 820, 823), declared no one complained to him that free access of movement was being interfered with (R. 822). Walter Lewis, an employee, had no trouble driving to the company store (R. 699). Yet, the district court and the Sixth Circuit found (R. 33, A. 29) that UMW had "blocked" plaintiff's road and placed guards at a point between the intersection of the road with the public highway and the mine, and would not let customers enter the property, although only one truck driver testified he was told by an unidentified "stranger" not to enter (R. 195).

On this occasion, as Meadow Creek's day-shift employees came from the mine, speeches were made by Ridings, Brown and Howard Madewell, local union president at the Fentress mine.[26a] Ridings reported that Ray had re-

[24] R. 714-16, 833-4, 726, 737.

[25] R. 114, 120, 338.

[26] Witness Wilson declared that "cars could have gotten by" the car (R. 837).

[26a] Fentress Coal & Coke Co.

fused to sign a contract; invited those who had not joined UMW to do so; told them that UMW members from other mines had come to visit with them; and explained the benefits they would have under a UMW contract (R. 586). Ridings "said everything" to "*encourage* the men to get in the union" (R. 265-6).

On the other hand, while Meadow Creek witnesses, *none of whom were Meadow Creek employees,* charged the speakers with coercive statements, pertinently their statements vary. Morgan, Meadow Creek's officer and director, attributed to the three speakers the statement that "there would not be another lump of coal come up the slope of that mine until the president of this company signed the Union contract" (R. 279); witness Mathews' version was that Ridings said there would be no more coal "coming up there until they organized" (R. 339); and a third witness quoted the speaker as saying that if the men wanted to work "they were going to have to join the Union", that "the mines might be blown up on them" and "their wives and children might be found dead in a hollow" if the men worked; and that "they just weren't going to operate until they joined the Union" (R. 372). Of Meadow Creek's 169 employees, George Stamps, an employee and a deputy sheriff, alone quoted Ridings as saying that " 'If the mine is operated any more,' . . . it would be under a Union, that it wouldn't be another ton of coal run out of there till it was organized" (R. 403).

Other Meadow Creek employees as UMW witnesses, and Sheriff H. E. Higgenbotham, who heard the speeches, heard no threats (R. 801, 822). A minister, Tommy Vaughan, testified that Ridings invited the men who "wanted to" sign a card "to come on around and sign" (R. 809); Walter Whitaker, an employee who on January 12 had not signed and did not on that day sign a UMW

card, heard no threats (R. 866); testifying similarly, Martin Murphy, an employee, stated no threats were made and he himself handed out UMW cards (R. 765); and employee Walter Lewis, who heard no threats, credited one of the speakers with the statement that "he hoped that we wouldn't go back till we got a contract with" UMW (R. 702). Contradictory of Meadow Creek witnesses, Sheriff Higgenbotham heard no inflammatory remarks of any kind (R. 822); Ridings denied that either he or Brown made the statements charged to them (R. 587); and Madewell denied making any threats to the men in his talk or threatening that the miners' families would be in danger if the men returned to work in the mine (R. 739). Meadow Creek's Morgan, on the other hand, admitted the speakers' discussion of union benefits and their *encouraging* the men to sign Union cards (R. 279). Many of the group assembled talked with Meadow Creek employees to interest them in joining UMW. Some of the group had worked previously with Meadow Creek employees (R. 809, 699-702); and one of the group talked with a relative who was a Meadow Creek employee (R. 717-8). *Not a single Meadow Creek employee came to the witness stand to complain that he had been threatened, coerced or in anywise mistreated by any of the group assembled, or that he had refrained from working at the mine following the events of January 12 because of being afraid to do so.* A single incident is detailed by Meadow Creek's witness Stamps, the deputy sheriff who admitted he made no arrests there that day, that he heard one of the group tell Amon Key that "if he wanted his family living, he was going to have to join the Union" (R. 425) but Amon Key was not placed on the stand so to testify or that he was threatened; while Stamps himself asserted in Key's presence, "He [Key] don't have to sign nothing" (R. 404).

While some of Meadow Creek's witnesses present at the scene depicted the situation as having "an attitude of tension" or a "powder keg" (R. 119, 374), other Meadow Creek witnesses testified contrariwise: Morgan, company official and director (R. 274), saw no trouble of any kind but only "people milling around and talking" (R. 307); a police chief's testimony contained no portrayal of trouble; a deputy sheriff admitted that no one was placed under arrest and he had seen no one hit (R. 425); and another Meadow Creek witness, who was paying, and continued to pay, employees their wages, and who continued to weigh coal during the speech-making, refused to picture the situation as "excitement", declaring only "there were a lot of men milling around" (R. 537-8). Not only did Meadow Creek employees' testimony corroborate the version that the gathering was peaceful (R. 779, 801, 702, 865), likewise Sheriff Higgenbotham related that the men "were just walking around there, talking to one another, milling around" (R. 821); and he saw no violations and heard no inflammatory remarks of any kind (R. 822).

Two Meadow Creek witnesses testified that they saw a single unidentified "stranger" with a gun (R. 195, 201), and another Meadow Creek witness admitted that on this occasion he too carried a gun (R. 378-9). Other witnesses declared they saw no gun other than the one which the deputy sheriff, who was also a Meadow Creek employee and was one of the employees who returned to work as a nonunion employee, carried "swinging from his hip" (R. 740, 865, 810, 821, & 0). While there was testimony that there was some liquor among the group assembled (R. 117, 561) and "part of them was drunk" (R. 404), a Meadow Creek employee (R. 866) and others (R. 695, 740, 721, 871) testified to the contrary.

Although there is no testimonial support for the finding by the trial and appeals courts that UMW "determined . . . to close down [Meadow Creek's] mine by force; and, through its representatives in the area and with the aid of many of its members in that region of Tennessee and Kentucky, conspired to go in force upon" Meadow Creek's property (A. 2-3, 16), there is evidence that the matter of the employees' meeting at the Meadow Creek mine was discussed at a local union meeting of employees of the Fentress Coal and Coke Company, at which the local union president told the employees when the meeting was to be, and that he "would be glad to have" the members go along (R. 743), and that Ridings was not at that meeting (R. 732). There is further testimony that those who attended the meeting went as volunteers and, as one witness related, no union officials asked him to go and that he went at the invitation of other employees (R. 812).

Meadow Creek employees refuse to work; and Meadow Creek's President goes to Florida.

On the following day (January 13), only eight to twelve of Meadow Creek's employees reported for work (R. 84) and Meadow Creek determined that it was unable to operate the mine with so small a number of men (R. 130, 479). About January 22, Meadow Creek's president Ray left for Florida on vacation, without making any effort to contact any union representative. The district court found "the Union was furnished with" Ray's Florida address, that no UMW representative "got in touch with him" and that upon his return to Monterey in March, defendant "still made no effort to meet with him or discuss the matter, yet . . . Ridings knew that he was in Monterey" (R. 35), and both the district court and the appeals court alike ignored undisputed evidence that late

in January Ridings and Brown contacted Meadow Creek's Morgan and suggested a meeting be arranged but Morgan advised that he had no authority to negotiate a contract and that Ray was out of town (R. 283-4, 312-13). The courts were unconcerned with admissions by Morgan that he advised Ray of these contacts but received no instructions with reference to such a meeting (R. 315), or that when Ray returned from Florida early in March he made no effort to communicate with union representatives before his second departure for Florida (R. 131-2). When Ray left for Florida he left no instructions to arrange a meeting with UMW. Neither the district court nor the Sixth Circuit concerned itself with the unchallenged evidence that during January, 1948, 122 of Meadow Creek's employees had become UMW members at Local Union 8990, and that throughout February, March, April, May and June, 1948, approximately 130 members of said local union had been Meadow Creek employees on January 12 (See P. Ex. 11, R. 963-984).

Meadow Creek's President returns and Tennessee Coal Company is formed in April to operate the Meadow Creek mine.

In April, Ray returned from Florida and a corporation known as Tennessee Coal Company[27] was organized by two supervisory employees of Meadow Creek and one Vaden Lackey (R. 91, 319). Meadow Creek and Tennessee Coal entered into an agreement whereby the latter would have complete charge of the mine operation and the employment and direction of the work force; all coal mined was to be delivered to Meadow Creek, which was to sell it; Meadow Creek was to reimburse Tennessee Coal for cost of operation, including officials' salaries and, in addition, 10¢ a ton for each ton of coal produced. Ten-

[27] Herein referred to as "Tennessee Coal."

nessee Coal operated the mine during the remainder of the time material herein.

While Ray claimed that organization of Tennessee Coal, through others, was his idea to minimize his losses (R. 88-92), the record establishes that Ray had decided to let the mine "set" (R. 152) and as late as April, 1948, he told supervisory employees that he "was through with coal business" (R. 889).

Tennessee Coal, in April, reopened the Meadow Creek mine on a nonunion basis (R. 704) with approximately 40 employees (R. 1009), of whom only two were UMW members (R. 963-84, P. Ex. 11), the other striking employees refusing to return to work (R. 496, 497). Of the 40 employees, approximately seven had not been Meadow Creek employees on or prior to January 12 (R. 526). The number of employees of Tennessee Coal, prior to July, was insufficient to operate the mine successfully. While the mine operated on a non-union basis, there was no picketing and no interference with operations at the mine (R. 140).

In late May or early June, officials of Tennessee Coal and Meadow Creek met with Ridings, Bell, Brown, District's President Vales and a committee from Local Union 8990 to discuss a collective bargaining agreement (R. 141-3, 481-2, 499). Several meetings for such purpose (R. 597, 782) were unsuccessful because of disagreement over seniority (R. 526-7, 597-8, 781-3).[20]

Alleged Threats to Customers and their Truck Drivers.

One of Meadow Creek's customers (Logan Vernon),

[20] Tennessee Coal's position was that employees should have seniority as of the date of their employment by Tennessee Coal, while the Union's position was that seniority be computed as of the date of employment with Meadow Creek (R. 526-7, 598-9, 781-3).

who admittedly, at the time of the hearing, had owed Ray's bank a substantial sum of money for "a couple of years" (R. 390-1), testified that he had obtained a load of coal at the Meadow Creek mine on January 12 and was at the mine when he observed the group; that "a fellow stepped up on my truck" whom he heard say, "That will be the last time a load of coal will come out of here" (R. 371-2); but this customer admitted that on a subsequent day he returned and obtained more coal (R. 374, 385). On both occasions Vernon admitted that he carried a gun (R. 374-5, 378-9), and that on the second occasion he had both a pistol and a rifle (R. 385).

While several truck owners testified that their respective drivers were unwilling to return to the Meadow Creek mine for coal (R. 192, 256, 361, 395), and another testified that he wouldn't send the trucks in" (R. 468), and another stated that he was afraid "I would get my truck torn up" (R. 356), since, as the evidence showed, the mine did not operate after January 12 until sometime in April, the trial court cogently asked why a truck driver would "go back when the mine was closed?" (R. 397).

A truck owner customer (Holbert) testified Stultz "advised" him "not to sell any more coal until the trouble was cleared up" and his place "would be blown-up" if he sold any more coal, following which he did not send any more trucks (R. 255). Holbert admitted that at the time he had a quantity of coal on his yard and that he sold the coal without any interference (R. 258). Another customer (Jessie Stewart), who was not at the mine on January 12, testified that he did not haul any more coal from the mine until after a contract was signed because he was "under the impression that there might be trouble" (R. 358-9). Other witnesses, not Meadow Creek

customers, related that there was "tension" in Monterey (R. 259-264).

Admitting he did not know all of Meadow Creek's employees (R. 197), plaintiff's witness Galyon testified that on January 12, a stranger, armed with a shotgun, stopped him at a point where the mine road turns off the state highway and told him to turn his truck "around and get out of there", which he did (R. 195), and that he was afraid to go back (R. 196). Another plaintiff's witness (Palmer), also a customer's truck driver, related he saw two strangers, that Galyon had told him "he couldn't get in", that he returned without getting any coal, and he did not return thereafter because he "figured there would be trouble and . . . I didn't want to get hurt" (R. 200-1). Palmer did not hear the "strangers" say anything to Galyon, and admitted he could see the crowd around the store but attributed no wrongdoing to it, saying that they were "standing around" and talking in groups (R. 202-3).

Without testimonial predicate in the record, the district court found (R. 37), and the Sixth Circuit agreed (A. 29), that on January 12 Meadow Creek had over 500 truck customers[29] scattered through Tennessee and Kentucky, of which over 100 were at the mine for coal on that day; that other trucks were blocked and the drivers threatened; and that "the drivers and owners of the 500 or more trucks . . . were placed in such fear of bodily harm that they did not return to the mine for coal until a contract was signed by the management with defendant in July 1948".[30]

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[29] Ray was unable to give the names of 500, saying, "I think with time I could give you 500 names of people that hauled coal from our mines" (R. 175).

[30] See Findings of Fact, Nos. 20-25 (A. 6).

District 19 furnishes groceries and supplies to striking members.

The record establishes that 63 Meadow Creek employees filed claims for unemployment compensation prior to April 6 (R. 1012), about which time the mine resumed operation by Tennessee Coal, and 40 persons were employed by Tennessee Coal (R. 1017); that the claimants testified "that the miners employed are non-union workers and if they were to be employed at the premises of other non-union mines in their community that they would be required to resign from the union, by the employers, before they could be re-employed" (R. 1017); that the unemployment compensation claimants were denied benefits from January 12 until April 6 because their unemployment was "due to a labor dispute which was in active progress at the mines where they were last employed" (R. 1017-18); and that such claimants, since April 6, have been unemployed, able and available for work for reasons "other than that of a labor dispute" (R. 1017).[30a]

Shortly after the strike's inception, when the strikers were denied their unemployment insurance, Ridings and Bell arranged with grocers to provide food and other necessities to UMW members on strike (R. 223, 545, 546, 549, 672). Arrangements were made with stores at which the employees normally traded (R. 227). In some instances assistance was given to strikers who were not normally customers (R. 225), and payment therefor was made by checks issued by District 19 (R. 271, 546). As Bell testified, while it was not their intention at first to pay any bills, after the strike "became lengthy, why, [the

[30a] These statements are based upon defendant's Exhibit 6, offered by defendant, objected to by Meadow Creek. The Court admitted the paper, stating that it would "pass upon its admissibility if it becomes material" (R. 860-1).

men had to be fed, they had to have something to eat; so we fed them" (R. 547, 669-70). These arrangements were effective from February through the first weeks of July, 1948, when a UMW collective bargaining agreement was signed by Tennessee Coal Company, then operating the Meadow Creek mine (R. 672). For such purpose District 19 expended approximately $76,000.00 (R. 671).

The Sixth Circuit approved (A. 29) the district court's finding (R. 39-40) that "The amount of money thus paid by the defendant to and for these employees of plaintiff who refused to work aggregated a large sum, probably well in excess of $70,000.00, and the Court further finds that this money was paid by the defendant for the benefit of such employees of plaintiff to keep them from returning to work for plaintiff."[1]

The railroad dynamiting incident of June 22.

About midnight on June 22, a switch on a spur leading from Tennessee Central Railroad's main line to the Meadow Creek mine was dynamited. Two individuals, members of Local Union 8990, were arrested on circumstantial evidence (R. 941) and charged with this occurrence (R. 409-10), and bound over to the grand jury, which failed to return an indictment against either of them (R. 410-11). These two men were visited in jail by District representative Bell, who "took them some fruit and cigarettes and visited with them" (R. 545).

Following the dynamiting of the switch, railroad employees who normally serviced the Meadow Creek mine protested against further servicing thereof because they

[1] Finding 33. This is one of the "acts and conduct of" UMW which the District Court concluded constituted an unlawful interference with Meadow Creek's business (A. 8).

believed it "endangers our lives without proper protection" (R. 212-14); the railroad company advised that Meadow Creek's attorney had advised that "there is no danger in working" the mine (R. 215, 929) and "there was nothing to fear" (R. 216). No railroad cars were delivered to the Meadow Creek mine until after the UMW contract with Tennessee Coal was executed (R. 100). The railroad's chief of police, upon investigation, found that while some people seemed "disturbed", likewise "some people didn't seem to have any feeling about it" (R. 220-21).

After the strike's end, Ridings requested of Tennessee Coal that prosecution of the two members be dropped. The district court and the Sixth Circuit alike found that a reasonable conclusion was that UMW "is responsible for the dynamiting" (A. 7, 29).

The foregoing dynamiting incident is one[32] of the "acts and conduct of" UMW which the district court found and concluded, and the Sixth Circuit agreed (A. 29) was violative of Meadow Creek's rights under the common law obtaining in Tennessee entitling it to recover damages.

The Willard Clemons incident of July 2.

Testifying as a Meadow Creek witness, Willard Clemons, a UMW member employed at a nearby mine, who had not been present at the Meadow Creek mine on January 12, related he had in early July learned from "general rumor" or from other UMW members that there was to be a meeting and that he and about 40 others met at Monterey "to march on the mines" but did not get organized for lack of a leader (R. 233), whereupon Clemons, knowing that some Meadow Creek employees

[32] See Findings of Fact 26-29 (A. 6-7); Conclusion 5 (A. 11).

would be coming to the mines, "decided to take some boys out there and stop them" (R. 234) and, armed with a pistol and accompanied with about fifteen or twenty men (R. 234-5), Clemons stopped a car in which were three Meadow Creek employees, called them scabs and told them "We have come to shut you down" (R. 235). No blows were struck (R. 243-4). Admitting he used "some pretty rough talk" (R. 235), Clemons declared that he did not point the gun at the men and that he "apologized . . . *for the language*" *used and told them he "was sorry"* he had talked to them in such manner (R. 236). There is no evidence that Ridings had any connection with this incident and Ridings testified affirmatively that he had none (R. 270).

Three days later, when Clemons was returning home from work with two other union miners, they were attacked by three non-union workers (Tennessee Coal employees) who, blocking the road with their car, shot through the windshield of the car in which Clemons was riding and shot off Clemons' right thumb and broke two other fingers and a later shot struck Clemons in his side and back (R. 244-8). More than a year later Clemons wrote a letter to UMW's President Lewis, explaining his injuries and that he "had been trying to help organize" (R. 253), and inquiring whether, because of his permanent physical impairments as a result of the shooting, UMW could pay him for the injuries suffered (R. 249-50, 604). While Clemons denied that UMW ever paid him anything for services in connection with the organizational activity (R. 238), or that he even sought compensation for services (R. 249), or that he was ever paid anything therefor (R. 251), the matter was referred to District and investigated by Ridings, who discussed with Clemons the situation. In June, 1950, Clemons re-

ceived five thousand dollars (R. 238, 250-1) from District (R. 605), for which he executed to the District a releasement (R. 606, 1004).

Although Clemons testified he was not employed in any capacity by UMW during the 1948 period (R. 240), held no official position with that organization, acted under no instructions or orders from any UMW official and what he did was his own individual conduct (R. 241, 242), and that no one connected with UMW had asked him to be armed (R. 243), the District Court found that Clemons "had been very active in aiding and assisting defendant in its activities in connection with" the Meadow Creek mine (R. 40, Finding 34) and concluded it was one of the "acts and conduct" which constituted "an unlawful interference with the plaintiff's business, in violation of the plaintiff's rights under the common law obtaining in Tennessee" (R. 43, Conclusion 5).[33]

Tennessee Coal signs a UMW contract on July 13.

Early in July, Meadow Creek's Ray and Morgan negotiated an agreement with Allred[33a] and his associates to take over Meadow Creek's mine management. At Ray's suggestion, Allred purchased Vaden Lackey's stock in Tennessee Coal, and Allred became that company's president (R. 507-8, 512). Under the arrangement, salaries of Tennessee Coal's officials were paid by Meadow Creek; 30% of Meadow Creek's profits were to be paid to Allred and his associates (R. 512), and none of such profits were to be paid to Tennessee Coal (R. 512-13). Thereafter, Allred met with Ridings, Bell, Brown and District 19's

[33] While the Sixth Circuit did not, with specificity, delineate the Clemons incident as attributable to UMW, it did so in its affirmance of the district court's 41 separate findings (A. 29).

[33a] Jonathan A. Allred and his partners had operated a mine near Meadow Creek's mine (R. 503-5).

president Vales (R. 513-4, 598), and in July, an agreement between Tennessee Coal and UMW was reached (R. 526-7, 598-600). Coal production continued thereafter until November 30, 1953, when Meadow Creek sold its mine to Clinchfield Coal Corporation (R. 78).

b. The issue of compensatory damages.

According to Meadow Creek's evidence, and both courts so found (R. 41, A. 9, 29), mining and working conditions at Meadow Creek's mine were good, there was a vein of coal averaging 5½ feet in thickness, and during 1947 Meadow Creek mined about 217,000 tons, about one-third of which was transported by truck and the rest by railroad, netting Meadow Creek a profit for that year of $374,149.17. Meadow Creek's Ray testified that in January, 1948, for a nine-day production period, which included January 12, Meadow Creek produced approximately 1,100 tons a day (R. 55-58). The district court found the net profit of this coal to be an average of $3.13 per ton. During 1948, Meadow Creek and Tennessee Coal produced more than 73,000 tons, on which Meadow Creek's profit, before federal taxes but after deductions to Tennessee Coal for its operational costs and profits, amounted to $73,415.32 (R. 959-61).[34]

For February and March, 1948, during which no coal was sold, Meadow Creek lost $8,281.66 (R. 73-4), and although the mine resumed operation on April 17, it lost a total of $23,379.17 during (R. 74) April, May and June, despite the fact, which both the trial and appeals courts ignored, that the mine was operated without picketing and without any incident, and that while only about 40 men worked, the remaining 129 employees re-

[34] The district court made no mention of this fact in its findings, nor does the Sixth Circuit's opinion.

fused to do so because of the lack of a UMW contract (R. 140, 148-9).

The evidence establishes that although eight to ten employees reported for work on January 13, plaintiff determined that it was unable to operate the mine and closed it completely, and while Ray contended that he did "everything possible to minimize my losses" (R.), on January 22 he left for Florida, as was his custom; he made no effort to contact union representatives upon his return from Florida in March; he unconcernedly returned to Florida and did nothing about attempting to reopen his mine until, on his return from Florida in April, his "key men" asked him to let them run the mine, telling them that "the way I was feeling . . . I was through with coal business" (R. 889).[35] Neither the district court nor the Sixth Circuit gave any consideration to these facts, yet ascribing fault to UMW because union representatives had "requested" no meetings (R. 35, A. 4).

While there is no contention on Meadow Creek's part that following execution of the UMW contract in July, UMW was guilty of wrongful conduct, and the record shows that production was curtailed voluntarily by the operating company after the contract's execution (*post*, p. 53-9), the Sixth Circuit approved the district court's finding that UMW had caused Meadow Creek "to suffer damages to its business for the year 1948, principally for the first half of that year" (R. 41-2, A. 31).

In its findings, the district court noted that Meadow Creek had a contract effective January 1, 1948, and continuing through 1948, and longer, with Tennessee Valley Authority for a quantity of coal to be shipped daily (R. 41), and this was an element upon which the district court based its award of compensatory damages (R. 41-

[35] Such was Ray's testimony upon pre-trial examination (R. 889).

42). In view of the district court's awarding Meadow Creek damages "to its business for the year 1948" (R. 42), it is pertinent that while Meadow Creek supplied Tennessee Valley Authority a total of 2,752 tons of coal during that portion of the 12 days Meadow Creek operated in January, for the months of September and December, 1948, it supplied the Authority with only 3,497 and 7,800 tons, respectively. Such shrinkage in coal delivery in the last half of 1948 to the Authority was not due to transportation difficulties (R. 178-9) nor to labor troubles but to the fact that Meadow Creek operated on far less than a full-time basis after execution of the collective bargaining agreement: it operated 20 days in August, 19½ days in September, 21 days in October, 12 days in November, and 10 days in December (R. 915-19). A Meadow Creek witness, asked why, in "the best season", Meadow Creek did not employ more men, answered, "Offhand, I don't know" (R. 499). Likewise, Meadow Creek's Morgan could not answer the question why more coal was not produced during the latter part of 1948 (R. 331), but admitted that the Authority accepted all the coal that Meadow Creek shipped (R. 294). Nor could Morgan explain why twenty-odd men had been laid off in September or October (R. 333).

Although the Sixth Circuit approved the district court's findings that Meadow Creek "had in excess of 500 truck customers of different truck owners scattered over a large area in Tennessee and Kentucky" (R. 37, A. 6, 29), and that "the drivers and owners of the 500 or more trucks . . . were placed in such fear of bodily harm that they did not return to the mine for coal until a" UMW contract was signed, and this is one of the elements on which the district court based its award of damages (R. 42), Ray was unable to give the names of the 500, testifying, "I think with time I could give you 500 names of

people that hauled coal from our mines; it would take a week or two to do it, but I think I can get it up" (R. 175).

No consideration was given by either the trial or the appeals court to the fact upon the strike's conclusion, Tennessee Coal, in operating the Meadow Creek mine, employed only 66 men, 33 of whom had worked during the strike and 33 were employed at the strike's end, and that although virtually all of the other striking employees were available for work, they were not employed at Meadow Creek mine (R. 497-8, 527-8).

The district court did not explain the method it employed in the assessment of compensatory damages, but found that $300,000.00 was a "fair amount" to compensate Meadow Creek for its losses (R. 42). The Sixth Circuit found "adequate substantial evidence to support the award" without explanatory factual or legal supporting reasons or citations (A. 31).

c. The issue of punitive damages.

The Sixth Circuit approved the district court's finding that UMW "acted wilfully and wantonly and with the intent to damage" Meadow Creek's business (R. 40, A. 9, 31), and its conclusion that by reason of the "wilful and malicious conduct" of UMW in closing Meadow Creek's mine and interfering with its business, Meadow Creek "is entitled to recover . . . punitive damages" of $100,000.00 (A. 12, 31), rejecting UMW's contention that there was no evidentiary predicate for such finding and conclusion. While the district court found that Ray's life had been threatened (R. 35), a finding approved by the Sixth Circuit, the premise therefor was Ray's own testimony that a man named Nixon, a school principal who was not connected either with UMW, District or Meadow Creek (R. 89-90), had told him in March 1948, that Ray

"didn't know how serious the situation was", and asked him if he had not read about a railroad president "in the Chicago country being slain by a bunch of labor racketeers up in Illinois", and that Nixon intimated to him (Ray) that the latter "was in a very dangerous position" and "liable to be hurt at any time, seriously hurt" (R. 86); and Morgan's story that he heard Huey Brown make the statement though it was not directed to him (Morgan) [R. 318]—that "if anything happened to him [Brown], Turner Ray wouldn't last ten minutes" (R. 286).

Reasons for Granting the Writ

I.

The Sixth Circuit's approval of federal jurisdiction asserted herein by a district court over a state common-law damage action growing out of a labor dispute between a union and a primary employer admittedly engaged in commerce within the Act's Section 303, when conjoined with an unsustained federal claim under that section, presents the issue of the implementation of the doctrine of ancillary or pendent jurisdiction in the field of labor law. There is thus presented an important federal question in the administration of said section which has not been, but should be, settled by this Court. Heretofore, the "importance of the jurisdictional issue involved" has grounded the issuance of certiorari. *Bell* v. *Hood*, 327 U. S. 678, 680.

The Sixth Circuit's decision and judgment are totally discordant with the Congressional intent in its enactment of Section 303; they inappropriately implement the doctrine of ancillary or pendent jurisdiction enunciated in *Hurn* v. *Oursler*, 289 U. S. 238; they transgress this Court's enunciated criteria for determining the limits of federal district court jurisdiction of non-federal involvements, absent the element of diversity of citizenship;

they conflict with decisions of other federal courts of appeals, particularly that of the Fourth Circuit's *United Mine Workers of America* v. *Patton*, 4 Cir., 211 F. 2d 742 (1954), as well as those of federal district courts; and they are at odds with previous Sixth Circuit's decisions.

In holding that under the facts as found by the district court "the claim of secondary boycott" under Section 303 and "unlawful conspiracy are not separate causes of action, but merely different grounds to support a single cause of action", the Sixth Circuit necessarily overlooked and ignored the legislative history of Section 303, which shows that lack of a federal cause of action for damages resultant from alleged wrongful union activities and the right to sue therefor in federal courts was the motivating occasion for Congress' adoption of the Act's Section 303. Its legislative history records that as originally proposed and passed in the House of Representatives federal district courts would have been vested with jurisdiction to try damage actions based upon causes of action involving virtually every type of interference arising in the course of a labor dispute.[35a] While Congress, in enacting Section 303, was "concerned with reshaping labor management legal relations",[35] it rejected the extension of federal jurisdiction to the adjudication of labor dispute damage actions except insofar as that section "describes and contains specific union conduct directed to specific objectives". *Cf. Local 1976, United Brotherhood of Carpenters, etc.* v. *National Labor Relations Board*, 357 U. S. 93, 99, wherein this Court made it clear that a "primary employer", such as is Meadow Creek in the case at bar, "with whom the union is principally at odds, has no

[35a] Legislative History of the Labor Management Relations Act, 1947, Vol. I, p. 158, 204. Section 12 of H.R. 3020, as passed House, is copied herein, Appendix III, p. 33.

[35] *International Longshoremen's etc. Union* v. *Juneau Spruce Corp.*, 342 U. S. 237, 241-2.

absolute assurance that he will be free from the consequences" of Union activity "by means other than those proscribed" in Section 303 (357 U. S. 99).[37] The Section's legislative history teaches, too, that in its enactment of Section 303, Congress created a new *cause of action*,[38] and this has been judicially recognized in the federal courts. *Schatte* v. *International Alliance, etc.*, 9 Cir., 182 F. 2d 158; *Fatato, Inc.* v. *Beer Drivers Local Union 24*, DC, N. Y., 1950, 93 F. Supp. 481; *Banner Manufacturing Co., Inc.* v. *United Furniture Workers of America*, DC, N. Y., 1950, 90 F. Supp. 723. In creating this federal cause of action, Congress not only restricted such cause to activity expressly interdicted therein, but the Fourth Circuit's decision in *United Mine Workers of America* v. *Patton, supra*, rejected the contention that punitive damages were within the remedy of damage actions permitted under Section 303(b). Notwithstanding the total lack of any legislative indicant of Congressional intent to vest federal district courts with ancillary or pendent jurisdiction to determine common-law actions cognizable in state courts in connection with an alleged cause of action based upon Section 303, and despite positive legislative proof that Congress wittingly withheld from federal courts jurisdiction to try damage actions based upon union activity not condemned in Section 303, and that punitive damages were not recoverable, the Sixth Circuit's sanction of the district court's assertion of jurisdiction in the instant case and of its award of judgment for

[37] While the Court was dealing in *Local 1976* with Section 8(b)(4)(A) of the Act, since the proscriptions contained in Section 8(b)(4) parallel those forming the cause of action in Section 303, the Court's language is apposite in the case at bar.

[38] In the debates concerning Section 303, inquiry was directed at Senator Taft as to whether "all" the amendment would do, if adopted, would be to *create a cause of action for damages* . . . in a Federal court", to which Senator Taft replied, "That is correct". Legislative History of the Labor Management Relations Act, 1947, Vol. 2, p. 1372.

both compensatory and punitive damages based upon a "violation of the plaintiff's rights under the common law obtaining in Tennessee" (R. 43), achieves "that which Congress refused to enact into law" and, as this Court stated in *Colgate-Palmolive-Peet Co.* v. *National Labor Relations Board*, 338 U. S. 355, 364, "cannot be sustained".

The Sixth Circuit's approval of the district court's jurisdiction is likewise inconsonant with comparable judicial expressions in litigation involving other federally-created causes of action. In *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 483-4, a sit-down strike involvement, this Court stated that in a "suit, in which no diversity of citizenship of the parties is alleged or shown, *the federal courts are without authority to enforce state laws*", and that federal jurisdiction "is to vindicate such federal right as Congress has conferred . . . and violence . . . however reprehensible, does not give the federal courts jurisdiction". So, too, in *Hunt* v. *Crumboch*, 325 U. S. 821, 826, wherein plaintiff relied upon acts alleged to be violative of the Sherman Anti-Trust Act were identical to those which would have been considered under Pennsylvania's common law, this Court stated that "Whether the respondents' conduct amounts to an actionable wrong subjecting them to liability for damages under Pennsylvania law *is not our concern.*"

Both the district court and the Sixth Circuit declared *Hurn* v. *Oursler*, 289 U. S. 238, "to be determinative of the" jurisdictional issue. That they improperly employed the *Hurn* case to sustain the district court's non-federal-claim jurisdiction is mirrored by the Reviser's Notes to the Judicial Code (28 USC) in connection with Section 1338 thereof. As revised, that section expressly grants jurisdiction of a "claim of unfair competition when

joined with a substantial and related claim under the copyright, patent or trademark laws", and the Reviser explains that joinder "is intended to avoid 'piecemeal' litigation" and that such revision would enact "as statutory authority" the *Hurn* doctrine.[39] Reference to that doctrine in relation to Section 1338, and its absence in the other jurisdictional sections of the Judicial Code, demonstrate clearly that applicability of the *Hurn* doctrine which would permit joinder of a non-federal claim was restricted to Section 1338 cases. Such indicated restriction, coupled with Congressional failure expressly to provide for like joinder in instances arising under Section 303, fully sustain petitioner's assertion that *Hurn* and kindred cases have no applicability to Section 303 claims.[40]

Further, to sustain the conclusion of existent jurisdiction, the trial and appeals courts both declared (R. 42, A. 10-11, 24) that the "*material and operative facts supporting* the plaintiff's federal claim of secondary boycott *are substantially the same* as the facts supporting its non-federal or state claim of an unlawful conspiracy to injure its business." The vice of that position is that were this true—and petitioner denies that it is—a state common-law action supported only be evidence reflecting violation of Section 303 would be precluded under the doctrine of federal preemption, because Congress would have provided a federal remedy sounding in damages for viola-

[39] Cited also is *Musher Foundation* v. *Alba Trading Co.*, 2 Cir., 127 F. 2d 9 (1942). See Reviser's Note, 28 U.S.C.A. 1338 p. 66.

[40] Fortifying petitioner's position is the following st[illegible]t from an article "The Proposed Revision of the Federal Judicial Code", 60 Harvard Law Review 424-437, where (at p. 431) it is said:

> "In restricting the scope of the provision concerning joinder of nonfederal question to patents, copyright, and trademark cases, the proponents of the bill *have failed* to take advantage of an opportunity *to resolve the larger question of such joinder as applied to all types of cases involving original jurisdiction.*"

tions of Section 303. Since the federal claim may concern only the limited prohibited acts set forth in Section 303, if the involvements fell within the sweep of the statute only, the issue of jurisdiction to determine the common-law (nonfederal) claim would become obviated.[41]

Actually, however, the "material and operative facts" are not substantially the same.

The facts disclose that the dispute herein was essentially one between a labor group and the owner of the Meadow Creek mine, whether the dispute be considered as of the time when Meadow Creek itself operated the mine or subsequent to the formation of Tennessee Coal. This dispute was the occasion for the mine's closing; and whether this cessation of operation resulted through employee fear, as both the trial and appeals courts held, or resulted from collective employee desire to obtain benefits derivative from union membership, and Ray's determination not to operate on a union basis, as petitioner insists, it was primary activity which differs both as *matter of fact* and as *matter of law* from conduct violative of Section 303. The core of the dispute was the January 12 meeting at the mine, the speeches to the em-

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[41] The Sixth Circuit's citation (A. 23) of *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656, does not support the Court's jurisdictional holding. In that case, the common law tort action was instituted in a *state* court, and the issue in the United States Supreme Court was limited to the determination whether in enacting the Section's 8(b)(1)(A) Congress precluded *state* court jurisdiction in a common-law tort action based upon conduct interdicted by that section. In answering that issue in the negative, the Supreme Court reasoned that "Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct" (347 U. S. 663-4). What was the lacking remedy in the *Laburnum* situation, namely, a federal cause of action for damages, is provided for in Section 303(b) for injuries resulting from conduct proscribed under Section 303(a): hence, the inappositeness of the *Laburnum* case.

ployees, the work stoppage by Meadow Creek employees, the benefits provided to strike employees, the railroad dynamiting incident,[41a] and they are all matters material to a consideration of the strike's legality and the means used therein and all are pertinent under the common-law cause of action; yet such facts have no significance whatever to an asserted Section 303 violation. Congress did not make primary activity the basis of a *civil* action, regardless of the means involved; and this Court so indicated in *NLRB* v. *International Rice Milling Co.*, 341 U. S. 665, 672, when it professed that in enacting the secondary boycott provisions of the Act,

> "Congress did not seek . . . to interfere with the ordinary strike",

noting that the legislative history declared that the "primary strike for recognition (without a Board certification) is not proscribed" (341 U. S. 673, fn. 8). Congress' purpose as it related to secondary activity, we have been told by this Court,[42] was to restrict union conduct which effectuated *"the coercion of neutral employers, themselves not concerned with a primary labor dispute"*, and Section 308 *"describes and condemns specific union conduct directed to specific objectives"*. It is thus clear that Congress sought to limit the forces to bear in a labor dispute to those which the disputants could themselves directly muster; but, for such pressures, Congress provided no federal civil action. Recognizing a fundamental and traditional difference in the pressures attending primary activity from those existent in secondary-activity pres-

[41a] In a recent case, the National Labor Relations Board determined that inducement of a train crew was not violative of the Act's Section 8(b)(4)(A), because "Railroad employees are not 'employees' within the meaning of the secondary boycott provision of the Act." *Great North.. n Ry. Co.*, 122 NLRB No. 164 (February 13, 1959). 43 LRRM 1324.

[42] *Local 1976, United Brotherhood of Carpenters* v. *NLRB*, 357 U. S. 93, 98, 100.

sures, though not making "any wholesale condemnation of secondary boycotts",[4] Congress carved certain activities out of the total area of industrial conflict between labor and management and provided a complete, separate, distinct and new cause of action for union conduct expressly banned by Section 303 and, significantly, in vesting federal district courts with jurisdiction to determine damage actions based upon violations of that statute, it restricted such jurisdiction to a federal claim.

In its agreement with the district court's conclusion that the "cause of action" was "the violation by" UMW of Meadow Creek's "right to be free from wrongful interference with its business", both courts overlooked the fact that Meadow Creek's federal right is a totally different one from its common-law right; and that whereas the common-law right is relatively unrestricted, the federal right, as Congress has provided it in Section 303, is a limited one, and wholly distinct from the common-law right.

The Sixth Circuit deemed it "unnecessary to labor the point that there appears adequately sufficient evidence . . . to support" the district court's findings that UMW "set out by violence and threats of violence against appellee, its employees and customers, to accomplish its objective of 'organizing' " Meadow Creek's mine (A. 29); yet the irrelevancy of "violence and threats" thereof to a cause of action based upon Section 303 is manifested by this Court in *International Rice Milling* by its statement that (341 U. S. 672):

> ". . . the violence . . . is not material. . . . The substitution of violent coercion in place of peaceful persuasion would not in itself bring the complained-of conduct into conflict with §8(b)(4). *It is the object*

[4] *Ibid.*, 93, 99.

of union encouragement that is proscribed . . . rather than the means adopted to make it felt."

When it is considered that in the case at bar the Meadow Creek mine dispute was a "primary" one, that Union activity directed solely against the *primary* employer is not banned by Section 303, and that the January 12 acts and conduct which have been judicially condemned by both the district and appeals courts[44] are not violative of Section 303 and could not serve as a factual predicate to warrant a finding of a violation of that section, it is axiomatic that such conduct could not possibly serve to support a federal claim violation. This suffices, it is submitted, to demonstrate the fallacy of the conclusions reached by the two courts that the "material and operative facts supporting" the federal and nonfederal claims "are substantially the same" (R. 42, A. 10-11, 24).

Furthermore, to justify its "judicial economy" doctrine enunciated in the *Hurn* case, this Court rationalized that the federal and nonfederal claims "so precisely rest upon *identical facts* as to be little more than *the equivalent of different epithets* to characterize *the same group of circumstances*" (289 U. S. 246).[45] But the criteria utilized by the Court to justify its conclusion in the *Hurn* and kindred cases are clearly not present in Meadow Creek's common-law claim and its federal statutory claim. As it has been demonstrated, each of these two claims require a different set of circumstances: thus, in the case at bar the federal and nonfederal claims could not and do not "so precisely rest upon *identical facts* as to be little more than the equivalent of different epithets to characterize the same group of circumstances."

Heretofore, where federal jurisdiction of a nonfederal

[44] Findings 6-11 (R. 33-34, A. 2-4, 29).

[45] All emphases herein are supplied, unless otherwise indicated.

claim has been involved, joinder has been denied because of the lack of identity of basic facts. *Strey* v. *Devin's Inc.*, 7 Cir., 217 F. 2d 187 (1954); *Landstrom* v. *Thorpe*, 8 Cir., 189 F. 2d 46, 51; *Kaplan* v. *Helenhart Novelty Corp.*, 2 Cir., 182 F. 2d 311 (1950); *Kleinman* v. *Betty Dain Creations Inc.*, 2 Cir., 189 F. 2d 546 (1951). While the Second Circuit, in *Maternally Yours* v. *Your Maternity Shop*, 2 Cir., 234 F. 2d 538, noted *Kleinman* had been overruled and that the Second Circuit is "now committed to a broader view of pendent jurisdiction," it expressed a cautionary note in its observation that the "broader view" was limited by its assertion that such is the view "at least" in cases arising under Section 1338(b), thus indicating its doubt that it was applicable to situations not falling within that section's ambit. In an action under the Fair Labor Standards Act (29 U.S.C.A., Section 201, *et seq.*), a claim for double-time compensation under an Executive Order was rejected because "the causes of action are wholly unrelated". *Crabb* v. *Welden Brothers*, 8 Cir., 164 F. 2d 797 (1947). The Sixth Circuit itself reached a conclusion inconsonant with that in the instant case when, in *Allen* v. *Barr*, 6 Cir., 192 F. 2d 159 (1952), in a suit for a patent infringement, it was charged also that defendants had infringed plaintiff's trademark and had engaged in unfair competition relating to the patented device and the trademark; but because the trademark infringement concerned a common-law trademark and there was an absence of diversity of citizenship, the Sixth Circuit avowed the district court to be without jurisdiction. In the Sixth Circuit's *French Renovating Co.* v. *Ray Renovating Co.*, 6 Cir., 170 F. 2d 945 (1948), the Sixth Circuit itself proclaimed that a *sine qua non* to district court jurisdiction required "that both federal and non-federal causes rest upon substantially identical facts." Where a

claim for unpaid wages was a ground for suit under a New Jersey statute and also a "claim for the same items" based upon breach of a common-law duty, a district court held that "These are clearly separate and distinct causes of action and not separate grounds pleaded in support of one single cause of action" *Eisenmann* v. *Gould-National Batteries, Inc.*, 1958, DC, E.D., Pa., 169 F. Supp. 862.

In the citations which the Sixth Circuit used to sustain its conclusion of the district court's jurisdiction, it has employed the "identity of facts" test.

In *American Fidelity and Casualty Co.* v. *Owensboro Milling Co.*, 6 Cir., 222 F. 2d 109, the Sixth Circuit sustained jurisdiction of the entire controversy because "the claim arises out of a definite set of facts, which are the same, regardless of whether final recovery . . . is in full or only partial".[46] Likewise, in *Wertanen* v. *Welduction Corp.*, (1957), DC, E. D. Mich., 151 F. Supp. 440, in sustaining a claim under the Fair Labor Standards Act and a state claim, the district court noted that "a single set of facts supports both claims". Hence the supporting citations are of no precedent value.

Totally challenging the Sixth Circuit's decision that the federal district court had jurisdiction of a state claim, the Fourth Circuit, in *United Mine Workers of America* v. *Patton, supra*, rejected a contention that in a Section 303 cause of action a federal court was nevertheless warranted in awarding punitive damages for the common-law tort of interference, even though such damages

[46]. It is noteworthy that in the *American Fidelity* case the jurisdictional defense related to the *jurisdictional amount*. The case was not concerned with federal and non-federal claims, but with one cause of action arising under the common law and the other arising under a Kentucky statute.

were not recoverable under the federal statute.[47] Holding that Section 303 "makes no provision for the recovery of punitive damages", the Fourth Circuit declared that:

> "This is not a case brought under the diversity jurisdiction of the federal courts to enforce a common-law liability . . . *and the plaintiffs are entitled to invoke the jurisdiction of the federal courts only because they sue on a cause of action created by a federal statute, i. e., on the cause of action created by Section 303(b) of the Labor-Management Relations Act . . .*"

If ancillary or pendent jurisdiction is sustained herein, and all that is required to sustain jurisdiction in a damage action growing out of a labor dispute is to allege conduct violative of Section 303, then, it is submitted that virtually all labor dispute cases allegedly offensive to state common law have been brought within federal jurisdiction, thereby increasing the federal courts' case load far beyond Congress' intention and contemplation in enacting Section 303.

2.

Even though ancillary or pendent jurisdiction of the common-law state action is warranted—which petitioner denies—, a question concomitant therewith is whether the federal courts in determining a labor organization's responsibility for a common-law or nonfederal claim

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[47] In the *Patton* case, plaintiffs asserted, in their *Patton* brief in the Fourth Circuit (p. 34) that "The evidence is such to establish not only secondary boycott as made unlawful by the Taft-Hartley law but also the common law tort of interference with the contract right . . . In such a case where the federal question, to-wit, the secondary boycott under the Taft-Hartley Act, is not plainly wanting in substance, the federal court, . . . may nevertheless retain and dispose of the case upon the non-federal ground", citing the *Hurn* case. This contention appears too in *United Mine Workers of America* v. *Patton*, *supra*, as reported in 47 ALR 2d 850, 855.

must employ the standard or test of liability provided in Section 6 of the Norris-LaGuardia Act (29 U.S.C. 106)[48] as petitioner insisted, or whether, as both the district court and the Sixth Circuit concluded, common-law "principles of the law of master and servant, or principal and agent"[49] are applicable. In view of Congress' directive in Section 6 that no labor organization shall be responsible or liable "*in any court of the United States*" except upon such proof as is set forth in the section, it is clear that the Sixth Circuit has founded UMW's liability in a manner totally contrary to Congressional directive and poses a substantial and important federal question which this Court has not yet, but should, settle to aid the federal judiciary.

Norris-LaGuardia's purpose was to limit "the jurisdiction and authority of courts of the United States in labor disputes". *United Brotherhood of Carpenters and Joiners v. U. S.*, 330 U. S. 395, 401.[50] Section 6 of that statute expresses a Congressional purpose to insulate labor unions against responsibility for unlawful conduct of their mem-

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[48] Section 6 reads thus:

"No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

[49] District Court Conclusion 6, A. 11; also A. 25, 29-30.

[50] Section 2 of the Norris-LaGuardia Act (29 U.S.C. 102) reads, in part:

"In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

". . . therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted."

bers, agents, employees and officers.[51] That the section's provisions are binding upon all federal courts was this Court's declaration in *United Brotherhood of Carpenters & Joiners of America* v. *U. S.*, *supra*, p. 401. In Section 6 Congress was positive that *actual*, not theoretical, culpability or complicity was to be the test for union responsibility. Repetitive use of the word "actual" in the enactment undeniably evidences Congress' intent that unions be held liable for alleged tortious conduct upon factual realities and not juristic imputations.

The Sixth Circuit emphasized that Ridings was general director of the activities and of the other union members who participated in the acts and was high enough in UMW hierarchy to render that organization liable for consequences of its members' conduct, and that Ridings' operations were "either authorized by" UMW "or ratified after obtaining actual knowledge of the unlawful acts" (A. 30). But there is evident error in the Sixth Circuit's professions when tested by this Court's views in the *Carpenters* case. Therein (p. 406-7), discussing Section 6's word "authorization", it observed that "the requirement of 'authorization' restricts" the liability for officers' or members' unlawful acts, *"although such officers or members are acting within the scope of their general authority"* to associations *"who actually participate in the unlawful acts, except upon clear proof that the particular act charged, or acts generally of that type . . . had been expressly authorized, or necessarily followed from a granted authority . . . or was subsequently ratified . . . after actual knowledge of its occurrence."*

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[51] That the instant action concerns an association or organization "participating or interested in a labor dispute" within Section 6's meaning is made clear by a consideration of Norris-LaGuardia's Section 13. Section 13 of the Norris-LaGuardia Act [29 U.S.C. 113(a) and (b)] appears in Appendix IV, hereto, p. 36.

The Sixth Circuit's citation of the Fourth Circuit's *Patton* case in which the Fou: h Circuit applied the common-law agency principle, plainly shows that it did not apply the standard of Section 6. Even if union representatives were authorized to undertake organization of the Meadow Creek employees, authorization to do any of the tortious acts charged is not supported by any evidence, and certainly not by the "clear proof" which Section 6 commands.

Since there is neither clear proof of *actual* participation in, nor *actual* authorization of, wrongful conduct attributed by both courts to UMW, nor ratification thereof after *actual* knowledge, the distinctions between Section 6's requirements and those of the common-law principles applied by the courts herein are very meaningful, not only to UMW, which is presently confronted with a $400,000.00 judgment as a result of the implementation of an improper test of responsibility, but to every other labor organization confronted with defending itself in a federal court damage action based upon a nonfederal claim.

Antedating the Taft-Hartley Act, this Court gave full judicial recognition to Congress' intent and purposes in the *United Brotherhood* case, following which Congress, in enacting Taft-Hartley, sought to negate the effect of such decisional recognition by defining the term "agent" so as to reinstate the application of common-law principles, but only as to certain sections, among them, according to the *Patton* case, Section 303. The Second Circuit has noted that while Congress "expressly lifted

the bar of the Norris-LaGuardia Act"[52] in certain sections of Taft-Hartley specifically designated therein,[53] it rejected the contention that the Norris-LaGuardia provisions had been impliedly repealed. Liability against UMW must stem, if at all, from a common-law tort action and, since by Norris-LaGuardia's Section 6 Congress has mandated that all federal courts must apply the standard found therein, it is clear that in applying the common-law "master-servant" or "principal and agent" agency rule, both courts' conclusions conflicted with Congress' grant of authority and with this Court's pronouncement in *United Brotherhood* (330 U.S. 410) that:

> "Our only point is this: Congress in § 6 has specified the standards by which the liability of employee and employer groups is to be determined."

The Sixth Circuit's heavy reliance (A. 25) upon *Laburnum* and *Patton* cases to support its conclusion that the common-law principles form the test of UMW's responsibility manifests further error. *Laburnum*, an action originating in a Virginia *state* court, came to the United States Supreme Court with a single issue, namely, whether federal preemption foreclosed a state-court action for damages based upon conduct falling within Taft-

[52] *A. H. Bull Steamship Co.* v. *Seafarers' International Union*, 2 Cir., 250 F. 2d 326, 41 LRRM 2121, 2125. While the *Bull* case dealt with Norris-LaGuardia's Section 4 (29 U.S.C. 104), its discussion that Section 301, Taft-Hartley, "did not expressly" nor impliedly "withdraw the restrictions of the Norris-LaGuardia Act" is cogent in the case at bar since Section 303(b) is made subject to Section 301 and the Fourth Circuit in the *Patton* case (211 F. 2d 742) has held that "common law rules with respect to liability for acts of an agent" apply in actions under Section 303. See the agency definition found in the Act's Section 301(e) [29 U.S.C.A. 185(e)] in the Appendix hereto, p. 38. Cf. *W. L. Mead, Inc.* v. *Int. Bro. of Teamsters*, 1 Cir., 217 F. 2d 6, 9.

[53] Sections 101(h), 178(b) and 302(e) of Taft-Hartley [29 U.S.C. 160(h), 178(b), and 186(e).] See also 93 Cong. Rec. 6609, 7001; Legislative History of the Labor Management Relations Act, 1947, Vol. 2, 1552, 1622.

Hartley's Section 8(b)(1)(A); no question concerning Norris-LaGuardia's Section 6 was involved. So, too, in *Patton*, the Fourth Circuit declared that plaintiffs therein could invoke federal jurisdiction "only because they sue on . . . the *cause of action created by section 303(b)*", [211 F. 2d 749]; and since UMW liability herein is founded upon a common-law state action, the Sixth Circuit's use of *Patton* as supporting precedent is wholly discredited.

Further demonstration of the Sixth Circuit's error is found in its additional citations of its decision in *Lewis* v. *Benedict Coal Corporation*, 6 Cir., 259 F. 2d 346, which concerned the application of the common-law rule of agency under Section 301(e), and its comparison of *Patton* with the Sixth Circuit's approval of *Garmeada Coal Company* v. *International Union, UMWA*, (1954), DC, E.D., Ky., 122 F. Supp. 512, aff'd. 6 Cir., 230 F. 2d 945, which also involved an agency question under 301(e) and wherein the district court's rejection of vicarious liability was approved by the Sixth Circuit.

It is thus evident that both the district court and the Sixth Circuit have employed a totally erroneous test in finding and concluding that UMW is liable in the instant case and in imposing upon it a money judgment of $400,000.00. Clearly, this obviously erroneous judgment should be reversed through review by certiorari sought herein.

3.

If this Court should sustain ancillary jurisdiction herein to determine involvements of common-law tort actions, then review by certiorari of the courts' compensatory damage award of $300,000.00 is important herein to correct manifest error and prevent a gross miscarriage of justice, and also that the federal judiciary be aided in future comparable cases. "Because of the importance of

the problem presented", certiorari should be granted. *Bigelow* v. *RKO Radio Pictures, Inc.*, 327 U. S. 251, 254.

Petitioner has detailed herein (p. 33, *et seq.*) the factual situation relating to the compensatory damage award and submits that the proof adduced does not form an adequate basis for a reasoned judgment.

Though this Court has approved a reasonable estimate of damages based on relevant data, it has declared that an award must not be based on speculation or guesswork. (*Story Parchment Co.* v. *Paterson Parchment Paper Co.*; 282 U. S. 561-4; *Bigelow* v. *RKO Radio Pictures, Inc.*, *supra*, p. 264) and that proof of the damages sustained is the plaintiff's burden. *Robertson* v. *Blake*, 94 U. S. 728; *Jones* v. *Tenn. Central Ry. Co.*, 8 Tenn. Apps. 183.

While the district court professed its award to be based upon the "entire record" (A. 10), close scrutiny of the various findings relating to damages (R. 41-2) readily discloses that it employed no mathematical formula in determining that the award should be $300,000.00. To the contrary, the following discussion will amply show it is based upon speculation and guesswork, and is challenged by undisputed evidence. The Sixth Circuit swept aside petitioner's contentions without in any manner attempting to answer UMW's assertions and with a mere "Undoubtedly, there was adequate substantial evidence to support the award . . ." (A. 31).

Since the district court found Meadow Creek's 1947 profit to be $374,149.17 (R. 41, 951-3) and the evidence shows its 1948 profit to be $73,415.32 (R. 959-61)—a difference of $300,733.85—it is a reasonable conclusion that the $300,000.00 award was fashioned by the method of ascertaining the difference between profits for the two years, although both courts ignored the element of the 1948 profit.

Demonstration of the courts' employment of an entirely erroneous yardstick is that although the mine operated under a UMW contract after July 13 and without incident imputable to UMW, the Sixth Circuit nevertheless sanctioned the district court's allowance of damages *"for the year 1948, principally for the first half of that year"* (A. 10). The evidence manifests clear error and injustice in such a measure for the damage award.

Elemental is the postulate that damage recovery is limited to such as is the natural and proximate result of the wrongful act proved.[54] During 1948's second half, coal production at the mine grossly decreased from 1947's production, yet the evidence is devoid of any showing of causal connection between that fact and any acts and conduct imputed to UMW. Though Meadow Creek had not lost its contracts with Tennessee Valley Authority and it admittedly had ample sales for all coal it could produce (R. 145-6), curtailment of production was its own voluntary action: it employed only 33 of the approximately 130 strikers though virtually all of them were available for work; there was no lack of transportation facilities (R. 178-9); there was no labor trouble; and in September or October "20-odd" of its employees were laid off (R. 333). Meadow Creek witnesses could give no explanation for the cut-off (R. 333), or why more coal was not produced during the latter part of 1948, or why, in the "best season" Meadow Creek did not employ more men. (R. 499) Any decrease of production and attendant loss of profits are necessarily not attributable to any UMW conduct and it is clear that the district court erred in assessing damages for the full year 1948, and the Sixth Circuit did likewise in approving both the measure and the award. Correction of these palpable errors mandates the issuance of certiorari herein.

[54] 15 Am. Jur., Damages, Section 133, p. 541-2.

Furthermore, actually during 1948's second half, the production rate per man actually increased and the net profit per man was greater in 1948 (despite payment of the union wage scale) than during the corresponding 1947 period (R. 901-3, 915-17).[55]

Moreover, even as to the year's first half, the mine's closing resulted from Ray's adamant determination to terminate coal production rather than to bargain collectively with union representatives representing a majority of the employees. Ray's self-serving assertion of doing everything to minimize the losses is totally beclouded by admitted acts and statements. Had Ray as an employer been concerned about continued operation of his mine he would not have gone to Florida, as Ray did, ten days after the January 12 incident. His unconcern is reflected also in his admission that he made no effort either to contact union representatives or to leave instructions to arrange a meeting with them. Though Ridings and Brown contacted Meadow Creek's Morgan in an attempt to have a meeting, and Ray knew it (R. 315), upon his two returns from Florida Ray made no effort to communicate with them or to attempt to effect a bargaining meeting. Despite these admissions, and notwithstanding Ray's telling his "key men" at the mine upon his return from Florida in April, that "the way I was feeling . . . I was through with coal business" (R. 889), both the district court and the Sixth Circuit refused to take notice of Ray's admissions but imputed fault to UMW because union

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[55] A comparison of the net profit for the 1948 months with those in 1947 shows:

August, 1947	$1.92 per ton (R. 901)
August, 1948	2.10 per ton (R. 915)
September, 1947	2.15 per ton (R. 902)
September, 1948	2.60 per ton (R. 916)
October, 1947	2.68 per ton (R. 903)
October, 1948	3.04 per ton (R. 917)

representatives had not requested meetings (R. 35, A. 4, 17).

The Fourth Circuit,[56] in a comparable situation, rejected an employer's claim for damages growing out of a labor dispute where the business had been closed and the owner went to Florida, as Meadow Creek's Ray did herein; and noting the employer waited two years to bring its damage action—*whereas Meadow Creek waited six years*—the Fourth Circuit said:

> *"It is a most pertinent circumstance as bearing upon the bona fides of plaintiff's claim that action was not instituted until more than two years after the occurrences now relied upon . . .* as giving rise to the damages claimed."

Furthermore, Meadow Creek's mine operated from April 17 until late June when the alleged railroad dynamiting occurred; and even if that act is imputable to UMW (which it denies, see discussion, *post*, p. 68-71), UMW may not be charged with Meadow Creek's decreased production and consequent alleged loss of profits during the April 17-June 23 period since the record fully establishes that the miners on strike refused to work because of the absence of an UMW contract. No evidence is available in a voluminous record that employees remained away from work because they were afraid or of any conduct which may be attributed to UMW. To the contrary, in refusing to work at the Meadow Creek mine the employees were exercising a right, constitutionally guaranteed to them and legislatively recognized in Section 7 of the Act,[57] and it "was the exercise of these rights that created the situation which caused" Meadow Creek "to lose . . . its business". *Hunt* v. *Crumboch*, 325 U. S.

[56] *United Construction Workers* v. *Haislip Baking Co.*, 4 Cir., 223 F. 2d 872, 876 (1955).

[57] *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33, 34; 29 USC 157.

824. It is indeed an anomaly that the exercise of "allowable conduct" by these employees should serve as a medium for the imposition of a money judgment of $400,000.00 (both compensatory and punitive damages) against the employees' designated collective bargaining representative. *Cf. U. S.* v. *Hutcheson*, 312 U. S. 219, 234.

Another element further demonstrates how fallacious is the award of compensatory damages approved by the Sixth Circuit. Since the predicate for the compensatory award is loss of profits, it is significant to recall that in 1953 Meadow Creek sold all of its coal to Clinchfield Coal Corporation; and, since coal can be mined and sold only once, had it been mined in 1948 it would not have been available for sale to Clinchfield in 1953. Since Meadow Creek had the burden of establishing its loss of profits and they may not be presumed by courts, it was of course incumbent on Meadow Creek to show that its alleged loss in 1948 because of its not producing coal was not overcome by its sale of the same coal to Clinchfield. This, Meadow Creek has not done. The legal implication is to give Meadow Creek a double recovery.

Whatever may have been Meadow Creek's 1947 experiences in business volume and profits, its prospects for increased business and lower costs in 1948, or the general conditions in the industry,[58] its 1948 experiences as depicted in the instant record, at least beginning with resumption of operations on April 17 through June 23 and again from execution of the UMW contract on July 13, show the eventuality of the uncertainties inherent in the coal industry, and changing circumstances, not resultant of union conduct, which occasioned decreased production and profits, demonstrate that expected profits

[58] These are the factors used by the district court as the predicate for its award (R. 42 A. 10).

are, in their nature, contingent upon many changing circumstances, uncertain and remote at best, and prove the speciousness of the courts' use of such criteria for formulating the compensatory award herein. Their use, and the Sixth Circuit's approval of the award, show with precision clarity that the award and the findings and conclusions on which it is based are totally unwarranted. An award based upon speculation and conjecture, as is the instant one, would have been rejected by the Tennessee appellate court [*Morristown Lincoln-Mercury, Inc.* v. *Lotspeich Publishing Co.*, 298 S. W. 2d 788 (Tenn., 1956)]. In sanctioning the award, the Sixth Circuit has permitted the trial court to "legally guess the money out of one litigant's pocket into that of another." *Bokoshe Smokeless Coal Co.* v. *Bray*, 155 P. 226 (Okla., 1916). Under decisional law herein cited, and the evidence, the award and the findings and conclusions on which it is based, are unwarranted by the evidence and applicable law, and are both erroneous and unjust and should be reviewed and reversed.

4.

The Sixth Circuit sanctioned the district court's assessment of $100,000.00 as punitive damages, opining that "it rested within the sound discretion of the district judge to award" such damages because UMW's conduct, "through its agents, was of such wilful and malicious character as to justify" the allowance (A. 31). Because the Sixth Circuit, as well as the district court, has misconceived the law pertaining to punitive damages so as to be in conflict with the decisional law of both Tennessee and this Court, UMW submits that certiorari is warranted.

In Tennessee, malice is essential for an act to constitute

a tortious interference with another's business,[59] and this Court has judicially defined "maliciously injuring" as conduct done "*malevolently, for the sake of the harm as an end in itself, and not merely as a means to some further end legitimately desired*".[60] A long time ago this Court declared that persuasion and propaganda by a labor union "to enlarge their membership" was not "without excuse and malicious";[61] and now well-established is the postulate that attainment of the legitimate purposes for which labor unions exist is legal justification for interference with an employer's business and that an employer injured thereby is not entitled to damages.[62]

As representative of a majority of Meadow Creek's employees union representatives sought to encourage those who had not joined to do so and to procure from Meadow Creek a higher wage rate than it had been paying its employees and better working conditions through the medium of collective bargaining and an UMW contract. Ray's determined attitude not to deal with union representatives is found in his admission that he advised Ridings that if his men desired UMW affiliation he "would be glad to talk to them" and that his "door was open to any man any time" (R. 57), and to "let them come in and ask for [an UMW contract] and I would answer them immediately and promptly" (R. 128). Neither the trial court nor the Sixth Circuit concerned itself with this recalcitrant employer attitude.

The record affords not a single word to justify that

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[59] *Mann* v. *Third National Bank*, 198 Tenn. 70, 277 S. W. 2d 439 (1955); see also *Nashville, etc. Railway* v. *Harrell*, 21 Tenn. App. 353, 110 S. W. 2d 1032, 1040.

[60] *Aikens* v. *Wisconsin*, 195 U. S. 194, 203.

[61] *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209.

[62] Corbin on Contracts, Vol. 6, Section 1470; Forkosch, A Treatise on Labor Law, p. 398, *et seq.*

union conduct was "malevolently, for the sake of the harm as an end in itself"[63] while, on the other hand, it is abundantly clear that union representatives sought to promote the legitimate interest of Meadow Creek's employees and to effect an objective fully recognized and protected by law (29 U.S.C. 157). Culmination of the strike upon execution of the UMW contract and the workers' return to work under improved working conditions and higher pay is full challenge to Meadow Creek's contention that UMW maliciously sought destruction of its business and amply demonstrates the legitimacy of UMW's purpose in the strike activity. The Third Circuit has realistically recognized that "some disorder is unfortunately quite usual in any extensive or long drawn out strike" which it characterized as "essentially a battle waged with economic weapons" and that violence does not transform a strike for a legal purpose into an illegal form of employer interference as to warrant employee punishment, for, as the Third Circuit declared, "If this were not so the rights afforded to employees under the Act would be indeed illusory".[64]

When it is considered that admittedly no blows were struck; no injuries inflicted or attempted to be inflicted; no Meadow Creek property injured or destroyed; and there is not a thread of evidence of conspiracy to achieve Meadow Creek's closing by force, by violence, or by threats of bodily harm, the Sixth Circuit's declaration that UMW's conduct, through agents, was "of such wilful and malicious character as to justify" punitive damages of $100,000.00 is inconsonant with the evidence. Tested

[63] The district court found that there was "apparent animosity exhibited" by UMW "toward Ray individually" (R. 35). It pointed to no supporting facts because there are none. Also there was a district court finding that Ray's "life had been threatened" (R. 35). A ready answer, showing that UMW was not involved, is found *ante*, p. 36-7.

[64] *Republic Steel Corp.* v. *NLRB*, 3 Cir., 107 F. 2d 472, 479.

by the rule enunciated in the *Aikens* case, there is no predicate for an allowance of punitive damages.

The discussion under Reason 3 is apposite to the instant assertion that there is no supportive warrant in fact or in law for the punitive damage award, since Tennessee decisional law mandates that actual damage is an essential predicate for punitive damages. *Allen* v. *Melton*, 20 Tenn. App. 387, 99 S. W. 2d 219.

Under applicable law and the evidence herein, the award of punitive damages and the findings and conclusions on which it is based are unsupported and unwarranted, and should be corrected by issuance of certiorari herein.

5.

To reach its conclusion that the "means employed by" UMW "to accomplish its purpose were improper and unlawful, consisting of harassment, violence and threats of violence against" Meadow Creek, its employees, customers and others doing business with it (R. 43, A. 11), the district court made findings of fact wholly unsupported and unwarranted by the evidence and totally ignored and failed to consider factual data challenging such findings. In its approval, the Sixth Circuit did no more than to parrot the district court and failed to undertake any explanatory answers to UMW references to unchallenged evidentiary matter vital in a proper evaluation of the record as a whole. Unless, by certiorari, this Court reviews and corrects the manifest errors committed by the district court, with the imprimatur of a federal court of appeals, a gross miscarriage of justice will have been permitted and there will have been fashioned a pattern of liability not only so as to hold labor organizations responsible for monetary damages without

requisite proof but so that state common-law actions may "(stand) as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress"[43] expressed in statutes dealing with labor-management relations.

Since union representatives sought herein to achieve a collective bargaining recognition status and contract for employees at Meadow Creek's mine and thereby achieve for them a higher wage scale and better working conditions, it may not be gainsaid that their objective was wholly lawful. The attainment of a legitimate purpose for which labor unions exist is legal justification for interference with an employer's business relationship and an employer injured thereby is not entitled to damages. *American Steel Foundries* v. *Tri-City Central Trades Council,* 257 U. S. 184; *International Bro. of Teamsters, etc.* v. *Missouri Pac. Freight Transport Co.,* 220 S. W. 2d 219 (Texas, 1949).

The primal fallacy committed by the district court was its finding that UMW conspired and determined "to close down" Meadow Creek's mine "by force" prior to the January 12 meeting. Not only is there no evidentiary support for such finding, but the evidence is that more than a majority of Meadow Creek employees lived "in some two or three places" and it was decided to hold a meeting at the mine, typical of other meetings held in organizing compaigns (R. 640) to afford UMW membership an opportunity to talk to those of the Meadow Creek employees who had not already joined UMW (R. 640) and to encourage Meadow Creek employees to refuse to work without a union contract (R. 640-1). Some of the group at the mine on January 12 were former co-workers and one talked with a relative (R. 699-702, 717-18). Com-

[43] *Hines* v. *Davidowitz,* 312 U. S. 52, 67-8.

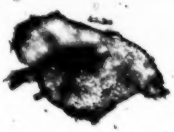
pletely militating against the court's findings of conspiracy and force is the undisputed fact that Ridings sought out Sheriff Higgenbotham to be present at the mine on January 12 "to see there wasn't any disturbance" (R. 820, 823).

The district court's unwarranted finding that union representatives failed to "recruit" a majority of Meadow Creek employees was adopted by the Sixth Circuit; yet the evidence shows that prior to January 12 "upwards of around a hundred" of the 169 employees had accepted UMW membership (R. 553); and during January, 1948, 122 of the employees became dues paying UMW members (R. 963-84, P. Ex. 11). Furthermore, during the strike period about 130 miners of the Meadow Creek mine employees maintained UMW membership; and although 40 of the 169 employees did not join UMW and despite their returning to work when the Meadow Creek mine resumed operation on a non-union basis, they were not in anywise abused, intimidated, or threatened, clearly reflecting that union membership was entirely voluntary and that the courts' findings concerning conspiracy, force, threats of bodily harm and violence are without factual substance. The fact that the courts did not consider these vital matters further evinces their error

Ray's recalcitrancy to bargain collectively with the designated representative of a majority of his employees has already been discussed (*ante*, p. 17-18); and his departure for a Florida vacation further demonstrates his adamant position against entering into an UMW agreement. Conceivably these were Ray's tactics to gain an advantage in the economic struggle between Meadow Creek and his employees; but whatever may have been his motive, operations at the mine were not resumed first, because of Ray's determination not to operate and, sec-

ond, because of the unwillingness of his men to work on a non-union basis. In any event, there is no legal warrant in making UMW responsible for the mine's not operating.

Both courts placed emphasis upon findings that the road was blockaded; that some of the men were "armed"; that employees and officers were threatened with bodily harm and that the mine would not run another day unless the company signed a UMW contract (R. 33-4). Details of these matters appear herein (*ante*, p. 18, *et seq.*). Yet, and most significantly, UMW submits, is the fact that *not a single employee testified that he had been either threatened, coerced or anywise mistreated by any of the group assembled, or that he had refrained from working at the mine following the January 12 events because of being afraid to do so.* While the two courts found that the road was blockaded, the evidence is to the contrary (*ante*, p. 18-19) as related by Meadow Creek's own witnesses, and Sheriff Higgenbotham declared no one complained to him that free access was not available (R. 822). Though there was a finding (R. 33) that some of the men were "armed", of 25 persons who testified that they were at the mine on January 12, 23 saw no guns while 2 related that one unidentified person at the head of the road had a gun (R. 195, 201). Pertinently, even Meadow Creek's official—W. E. Morgan who went to the mine on January 12 to see what was occurring—saw no firearms (R. 280). In a record wherein no one was injured or abused, no sinister inference may be justified from the fact that some of the men were "whittling" or "peeling apples", particularly in view that no Meadow Creek employee complained that he refused to work because of threats or intimidation or because he was afraid to do so. This fact is of utmost importance too in its challenge to the Sixth Circuit's declaration that UMW "set out by



violence and threats of violence against appellee, its employees and customers, to accomplish its objective of 'organizing' appellee's mine" (A. 29). Clearly there is no implication of force in Ridings' admission that he "said everything I knew to say to encourage those that weren't in the Union to get in, and if they felt like staying away until there was a contract, to do so" (R. 641). Certainly the lack of testimony by employees that they were threatened or intimidated is more consistent with Ridings' version of persuasion than it is with the courts' findings. If force had been the order of the day, there would have been no occasion to have a "pensioner" tell the gathered employees what the Union had meant to him and his family (R. 588).

The Tennessee appellate court has made it clear that "Not every threat of a strike, or other attempt to intimidate, will afford a cause of action" but that the "threat must be of a substantial nature, and adapted to influence a person of reasonable firmness and prudence". *Dukes* v. *Local Union No. 437*, 191 Tenn. 495, 235 S. W. 2d 7, 26 ALR 2d 1223, 1227 (1950).[66]

The Sixth Circuit's adoption of the district court's finding that in excess of 100 trucks at the Meadow Creek mine for coal on January 12 (R. 37, A. 6) finds support only in the uncorroborated testimony of the truck driver who related another driver told him trucks were not being loaded (R. 203). But the undisputed evidence of witnesses, such as Meadow Creek's Morgan, the Sheriff and Chief of Police who came to the mine *after* the meet-

[66] A similar test was applied in a criminal proceeding growing out of a labor dispute in *State* v. *Wooldridge*, 129 W. Va. 448, 40 S. E. 2d 899, 913, wherein the West Virginia court said: "... *nothing happened on this occasion which should have supplied reasonable grounds for any apprehension upon the parts of firm, sane and courageous men that a breach of the peace would occur.*"

ing's start and who had no difficulty in entering, counters the truck driver's version, for, had there been 100 trucks lined up attempting to get to the mine, attendant crowded conditions and confusion would have been a material part of the picture and with assurance may it be said that some of those persons would have been placed on the witness stand. Their absence therefrom is significant.

The district court's finding that District's Ernest Stultz went to a coal dealer (Holbert) and threatened to blow up his place if he sold coal from Meadow Creek's mine (R. 37, A. 6), approved by the Sixth Circuit, is rendered entirely incredible by Holbert's further testimony that the incident took place "sometime in the latter part of January" (R. 257), which was at a time when the mine was not operating and had no coal to sell. Moreover, Holbert admitted that he sold the coal on his yard which had come from Meadow Creek and that "we weren't bothered at all", and that upon resumption of operations he bought Meadow Creek coal again (R. 258).

Although Ray was not present at the mine meeting on January 12 and Morgan admitted he (Morgan) had not been threatened (R. 319), the Sixth Circuit's affirmance included the district court's finding that Meadow Creek officials had been threatened (R. 34, A. 3).

The courts' willingness to hold UMW responsible and to impose so enormous a money judgment as $400,000.00 upon it without factual support and in conflict with well-settled legal principles is reflected further in their imputing to UMW the dynamiting incident and the Willard Clemons incident and in attaching wrongful motives in the union's providing striking members with groceries and other merchandise.[67]

[67] Discussions of these matters are found as follows; the dynamiting incident, pp. 68-71; the Willard Clemons incident, pp. 71-2; and the union's supplying members with groceries and supplies, pp. 72-4.

The Sixth Circuit, in agreement with the district court, declared that "the case falls within the principles of the authorities" of *Brumley* v. *Chattanooga Speedway & Motordrome Co.*, 138 Tenn. 534; *Shell Oil Co.* v. *State Tire & Oil Co.*, 6 Cir., 126 F 2d 971; *United Construction Workers* v. *Laburnum Corporation*, 347 U. S. 656; and the Fourth Circuit's *Patton* case (211 F. 2d 742). Neither *Brumley* nor *Shell Oil* were labor dispute cases but instances of fraud, and neither involved the element of justification attendant in the case at bar. *Laburnum*, as decided by this Court, concerned solely the issue of whether a state court had jurisdiction to entertain a common-law tort action for damages; liability had already been determined by the Virginia appellate court,[68] and a feature definitively distinguishing it from the instant case is that in *Laburnum* a number of employees testified that "they would not return to work because the *declarants* were in fear of violence at the hands of defendants' agents" (75 S. E. 2d 709).[69] Citation of *Patton*, too, is abortive: it was not a "civil conspiracy" but an action based upon the Act's Section 303.

Where, as here, the findings and conclusions of liability lack testimonial support and are at war with undisputed facts and with applicable legal principles, their use as a predicate for a money judgment of $400,000.00 should be reviewed and reversed.

6.

(a) As a predicate for its conclusion that UMW had unlawfully interfered Meadow Creek's business, entitl-

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[68] *United Construction Workers* v. *Laburnum*, 75 S. E. 2d 694 (Va., 1953).

[69] See Printed Record filed in this Court in the *Laburnum* case [347 U. S. 656] (No. 188, October Term, 1953, pages 912-14, 925, 864, 846, 947, for statements of some of the employees).

ing Meadow Creek to recover damages and that the means employed were improper and unlawful, both courts found defendant responsible for the dynamite incident, already detailed, *ante*, p. 29-30. Such predicate, UMW submits, is in total conflict with previous pronouncements of this Court.

While neither court declared that the two UMW members arrested in connection with the railroad dynamiting were guilty as charged, they nevertheless imputed responsibility therefor to UMW (1) upon union representatives visiting the two members in jail and taking them fruit and cigarettes, and (2) upon Ridings' request of Tennessee Coal's president, subsequent to the UMW contract's execution, not to prosecute the charges against the two men (R. 515).

Ever since the first Coronado case,[70] the federal judiciary has regarded labor unions as entities wholly distinct from their union membership. This Court made this distinction positive in *U. S.* v. *White*, 322 U. S. 694, declaring that "actions of one individual member no more bind the union than they bind another individual member unless there is proof that the union authorized or ratified the acts in question" (p. 702).[71] Certainly the mere visitation of fellow union members, even though union representatives, may not achieve an agency nor UMW authorization or ratification for conduct of which the two

[70] *United Mine Workers of America* v. *Coronado Coal Company*, 259 U. S. 344, 387, 391.

[71] In the legislative debate on the question of agency during consideration of the Act, Senator Taft stated that ". . . I do not think there is anything in the fact that a Union is an unincorporated association which would bring about a condition in law that the act of every member is necessarily charged to the labor organization" (Legislative History of the Labor Management Relations Act, 1947, p. 1026). Again Senator Taft declared that "The fact that a man was a member of a labor union in my opinion would be no evidence whatever to show that he was an agent." (*Ibid.*, p. 1204-5).

union members, though charged, were not found guilty, so as to impose responsibility upon UMW under the doctrine of vicarious liability.

Nor may Ridings' request of Tennessee Coal's president not to prosecute the two members, made after the contract was signed, be regarded as legally effectuating a union ratification. On a former occasion, in the first *Coronado* case, this Court expressed its unwillingness to hold UMW responsible under the principle of ratification where the UMW president had written a letter thanking the president of the United States for pardoning a district president convicted of a conspiracy for which he had gone to the penitentiary, and later was appointed to a position on a district committee. This Court declared (p. 394) "It would be going very far to consider acts of the president a ratification by the International Board, creating liability for a past tort". Certainly there is less reason to impute responsibility to the union because of request made by Ridings in his capacity.

The railroad incident obviously was a pertinent factor in the courts' conclusion of UMW's liability, and in its fixing the damages against UMW, particularly the punitive award. That the Sixth Circuit regarded it as a significant incident is reflected in its characterization of the incident as "consequential"; yet the Sixth Circuit ignored, without explanation, UMW's contentions with reference to this incident. The Sixth Circuit's result conflicts with *Patton* where the Fourth Circuit grounded reversal, in part, for lack of evidence connecting defendants with dynamitings.

The foregoing discussion fully sustains UMW's position that, under applicable legal principles, there was not sufficient evidence to hold UMW responsible for the railroad dynamiting and that both courts have raised suspi-

cion to the status of fact, heretofore condemned by federal cases. *NLRB* v. *Sun Shipbuilding & Dry Dock Co.*, 3 Cir., 135 F. 2d 15, 31. It manifests the court's commission of error prejudicial to UMW; and it sustains the necessity for the granting of certiorari herein.

(b) Also grossly at odds with the cases above cited is the district court's finding that UMW was responsible for the acts of Willard Clemons, a UMW member, who, with other union members, stopped three employees of Tennessee Coal from going to work, cursed them, berated them for working during the strike, detained them for a short time, and then released them unharmed [See detail of facts, *ante*, p. 30-2]. Clemons, it will be recalled, was a UMW member who worked, not at the Meadow Creek mine, but at a union mine nearby. He was neither an employee nor an agent of UMW. In stopping the men, as he testified, he acted on his own initiative, without authority, direction or influence by union representatives (R. 242).

In discussing the incident, which the Sixth Circuit regarded as "relevant" (A. 20), and which the district court listed as one of the "acts and conduct" of UMW constituting unlawful interference, the district court found that Clemons had been shot by a brother of one of the men intercepted and that payment of $5,000.00 by UMW's check "was made to Clemons because of injuries sustained by him" (A. 8-9). UMW, in the Sixth Circuit, argued that it could not be legally responsible for a member's unauthorized act; that there had been no ratification of such unauthorized act since there was no evidence of intention to ratify, that the evidence did not establish UMW had knowledge of all material facts essential to ratification, and that the evidence showed that Clemons acted on UMW's behalf in stopping the men. 2 Am. Jur.,

Agency, Section 220. UMW pointed out also the district court's error in its finding that payment to Clemons violated UMW's Constitution for the year 1948 which the district court declared prohibited the use of its funds for the payment of any sick benefit or damage to a member. To the Sixth Circuit's attention it directed the fact that such finding was without factual support, and that while UMW's 1944 Constitution provided that local unions "shall be responsible for the payment of sick, accident and death benefit claims" (R. 991), in 1950 when Clemons was paid the money, the 1944 provision was not in effect, it having been deleted in Section 3, Article XIV, UMW Constitution, 1948 (R. 1006). Despite these factual errors, and although UMW, in the Sixth Circuit, directed that Court's attention that a new and unwarranted standard for determining responsibility of labor unions would be established if the district court's decision were permitted to stand, the Sixth Circuit ignored such contentions and, without benefit of judicial explanation, affirmed the district court's findings. UMW asserts again that unless corrected, the decision of the district court and the Sixth Circuit will have established not only a new and unwarranted standard for determining labor unions' responsibility, but they will have done so despite legal precedent to the contrary. *Republic Steel Corporation* v. *NLRB; UMWA* v. *Coronado Coal Co.*, both *supra*.

UMW submits that under applicable law, the evidence did not suffice to warrant and sustain the finding that UMW was responsible and liable for the acts of its member Clemons.

7.

Elsewhere herein (*ante*, p. 28), there has been detailed the facts concerning UMW's paying for groceries

and other merchandise for UMW members who had refused to return to Meadow Creek's mine for work. The district court found that money thus paid by UMW was paid to keep the employees from returning to work for Meadow Creek (R. 39-40, A. 8). The Sixth Circuit's affirmance thereof is inconsonant with federal legislation found in Section 20 of the Clayton Act (29 U.S.C. 52) and in Section 4(c) of the Norris- LaGuardia Act [29 U.S.C. 104(c)].

In 1914, Congress, in the Clayton Act's Section 20, established federal policy to permit "strike benefits or other moneys or things of value" to be paid and proclaimed therein that such payment or gift shall not "be considered or held to be violations of any law of the United States".[72] Reaffirmance of this right came with enactment of the Norris-LaGuardia Act, whose Section 4 is permissive of the payment to persons participating or interested in a labor dispute "strike, or unemployment benefits or insurance, or other moneys or things of value".[73] That Clayton's Section 20 and Norris-LaGuardia's Section 4 are expressive of federal policy is one of the teachings of *U. S.* v. *Hutcheson*, 312 U. S. 219 (1940); and while there has been both expansive and restrictive legislation enacted since 1932, there has been no minimization, by legislation or judicial interpretation, of the rights recognized by Clayton and affirmed by Norris-LaGuardia with reference to strike benefits. In a voluminous record, totally silent of any attempt to keep Meadow Creek's striking employees from returning to work, the district court's finding, affirmed by the Sixth Circuit, that UMW paid strike benefits to keep the em-

[72] Section 20 of the Clayton Act (29 U.S.C. 52) is found in Appendix IV herein, p. 35.

[73] Norris-LaGuardia Act, Section 4 (29 U.S.C. 104) is found in Appendix IV herein, p. 35-6.

ployees from returning to work for Meadow Creek is totally mythical, and without a scintilla of supporting evidence. Here again is another instance where the Sixth Circuit totally ignored and failed to answer in any wise the contentions submitted by UMW.

Since this incident is one of the "acts and conduct" employed by both courts to impress upon UMW a money judgment of $400,000.00, clearly in violation of federal policy, review by this Court is requisite to correct manifest error and to prevent a gross injustice.

8.

The strike here involved started on January 12, 1948. More than six years later, on February 12, 1954, this action was commenced.

UMW contended the action was barred by the three-year statute of limitations of Section 28-305, Tennessee Code Annotated. The caption thereof indicates relevance to "Property tort actions", and the statute is expressly applicable to "Actions for injuries to personal or real property, . . ." The Sixth Circuit, however, held that the present action was not for an injury to property but was controlled by a ten-year "catch-all" statute of limitations (A. 28-9).

This decision is erroneous and in conflict with the decisional law of Tennessee.

The Sixth Circuit's principal reliance was *City of Atlanta* v. *Chattanooga Foundry & Pipe Works*, 6 Cir., 127 F. 23 (1903), and on this Court's reluctant affirmance of that decision in 203 U. S. 390 (1906). These federal decisions narrowly construed the Tennessee three-year statute and held that it did not comprehend a cause of action under the Sherman Act for injuries in "business

or property". Judge Lurton, who wrote the opinion for the Sixth Circuit in the case, based his decision largely on the fact that the cause of action there involved was founded upon a statute and that such an action at common law is "in the nature of an action upon a specialty." Reasoning from this distinction, which Judge Lurton himself referred to as "quite refined", it was held that inasmuch as the cause of action was based upon a statute, it was based upon a specialty and was not merely an action upon the case. Hence the action under the Sherman Act did not fall within the three-year statute. Mr. Justice Holmes, speaking for the Supreme Court in the decision on the appeal which followed, though admitting to doubt, expressed agreement with the Court below on the basis of the "whole case".

The Sixth Circuit found the reasoning of the *Chattanooga Foundry* case applicable inasmuch as Section 303 of the Taft-Hartley Act, similarly to the Sherman Act, provides a cause of action in certain circumstances to a person "injured in his business or property" (A. 28). In so doing, the Court of Appeals persisted in its error of considering the present action a Taft-Hartley cause of action, rather than a common-law cause of action, for the purpose of determining some of the important questions involved on the appeal. It wholly ignored the fact that Judge Lurton apparently would not have held that the ten-year statute was applicable to an action which was not based on a specialty. It ignored, too, the fact that the cause of action upon which liability was founded was not an action upon a specialty.

The somewhat casuistic reasoning indulged in in the *Chattanooga Foundry* case is thus compounded in the present case for the Court of Appeals herein destroyed the repose which it is the purpose of any statute of limita-

tions to advance without benefit of the distinction available in the former case. No statute of limitations ought to be construed so as to singularize its application to a particular tort and permit institution of an action thereon for years after an action on an analogous tort is barred thereby. No sound reason is apparent why, for example, an action for the destruction of a chattel should be barred in three years and an action for the destruction of a business not for ten years. There is nothing to indicate such intention on the part of the Legislature and yet such is the logic of the Sixth Circuit's decision. The decision has the disturbing effect of calling for prompt action in a type of case in which there is a probability of certainty in evidence, while at the same time permitting the institution of an action for interference with business long after memories of the complicated occurrences involved therein have grown dim.

Manifestly the decision of the Court of Appeals in the instant case, in addition to overlooking the distinction between statute and non-statute liabilities made by Judge Lurton, failed to accord to the word "property" the common meaning placed thereon. That the right to engage in business is "property" is far too plain to require argument [*Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443 (1921)], and it ought to have been regarded as such by the Court of Appeals. It is in this respect that the decision of the Court of Appeals conflicts with decisional law of the State of Tennessee. In *Sanford-Day Iron Works* v. *Foundry Machine Co.*, 138 Tenn. 437, 198 S. W. 258 (1917), the Supreme Court of Tennessee ascribed a meaning to the word "property" broad enough to cover goodwill in business. It held that "property" includes "not merely the right of private use and enjoyment of tangibles but the intangible right of disposition and

sale. And the word in its broader and truer sense includes one's business, *as a thing entitled to protection from unlawful interference.*" (p. 440).

The carefully selected language just quoted reflects the considered opinion of the Tennessee Supreme Court on a similar question decided after the decision in the *Chattanooga Foundry* case. We submit that the clear inference of this language ought to have been followed by the Court of Appeals in the case at bar. *Hawks* v. *Hamill*, 288 U. S. 51 (1933).

The error of the Sixth Circuit, manifest from the foregoing discussion, should prompt the allowance of the writ sought herein.

CONCLUSION

For the reasons herein discussed, petitioner prays that this petition for writ of certiorari should be granted and that a writ of certiorari issue to review the decision and judgments of the United States Court of Appeals for the Sixth Circuit, entered in said Case No 13,470, on January 21, 1959, and February 23, 1959, as aforesaid.

Respectfully submitted,

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APPENDIX I

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Civil Action No. 1821

MEADOW CREEK COAL COMPANY, *Plaintiff*

v.

UNITED MINE WORKERS OF AMERICA, *Defendant*

Findings and Conclusions

The above entitled action came on for trial before the Court, without a jury, and the Court having been duly advised in the premises, now makes and files its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. That the plaintiff, Meadow Creek Coal Company, is a Tennessee Corporation, organized in 1935. It leases coal properties in Putnam County, Tennessee, within the geographical jurisdiction of this Court, and was actively engaged in mining and marketing coal in interstate commerce from its organization until January 1957, except for the period hereinafter mentioned.

There had been no labor troubles prior to January 12, 1948, on which date there were 169 men actively working in the mine.

2. The defendant, United Mine Workers of America, is an unincorporated labor organization. It is an international union with a membership of over three hundred thousand. It functions under a written Constitution and maintains headquarters in Washington, D. C., with district and local offices in all of the States and in Canada. It owns the building housing its principal offices in Washington, D. C., and owns other real estate and personal property. Its officers are a president, a vice-president and a secretary-treasurer. Its affairs are under the control of these officers and the International Board whose members are elected from the various districts in the United

States. It collects dues from its members at the rate of $4.25 a month, all of which is remitted to the Washington office, $2.25 of which collection is retained at the main offices in Washington, and $2.00 is returned to the district from which the collection is made, and this is divided between the districts and the members local. It has a perpetual existence, the right under various statutes to sue and be sued in its own name, it has a seal, the right to adopt by-laws, and the right to appoint and employ representatives, agents and other employees, the right to fix the compensation of the officers and other employees, the right to borrow and lend money, the right to own and maintain property, real and personal, the right to erect buildings and make improvements, the right to publish a newspaper of international circulation which it does do in the City of Washington. Generally, its members have no individual liability for the debts or obligations of the organization.

3. In 1944, two International Representatives of defendant called upon and informed Mr. W. T. Ray, president of plaintiff, that defendant represented a majority of plaintiff's employees, and that it wanted to negotiate a labor contract with the plaintiff. Mr. Ray did not believe that defendant represented a majority of his company's employees, and, therefore, a consent election was held under the supervision of the National Labor Relations Board, with the result that less than one-third of the legal votes cast were in favor of the defendant.

4. In the fall of 1946, defendant sent J. W. Ridings, a member of the International Board, L. H. Bell, an International Representative, Hugh Brown, an International Representative, and Ernest (Spooner) Stultz, an International Representative of District 19, into Putnam County, Tennessee, and adjacent counties to carry on an organization campaign at all mines not having a contract with defendant.

5. These men representing the defendant succeeded in organizing the workers in several mines and spent much of their time in and around Monterey, which was only two miles from the mine of plaintiff, in an effort to organize plaintiff's employees.

6. Sometime in late December 1947 the defendant, having failed to recruit the majority of plaintiff's employees, deter-

mined to close down plaintiff's mine by force. Through its representatives in the area and with the aid of many of its members generally in that part of Tennessee and Kentucky, defendant conspired to go on the property of plaintiff in force and in large numbers on January 12, 1948. In furtherance of such conspiracy, approximately 200 members of defendant met at the town of Sparta, Tennessee, about 22 miles from the mine of plaintiff, on the morning of January 12, 1948, and formed a motorcade from there to plaintiff's property, arriving in a body at about 2:30 P.M., just as the night and day shifts were changing.

7. Defendant, acting through its representatives and members, blockaded plaintiff's private road and placed guards at a point between the intersection of this road with the public highway and the mine, and would not allow customers to enter the property. These 200 men, some of whom were armed, intercepted plaintiff's employees and by persuasion and threats of bodily harm to them and their families, sought to get them to join the United Mine Workers of America.

8. The mob crowded into, in front of, and around the commissary, where J. W. Ridings, Hugh Brown and Howard Madewell made speeches from the bed of a truck backed up in front of the commissary. In these speeches, they told those assembled, including the employees of the plaintiff, both the night and day shifts, 169 in number, among other things, that the plaintiff's mine would not run another day unless the company signed a contract with the union.

9. Upon arriving at plaintiff's mine on January 12, 1948, Ernest (Spooner) Stultz, a representative of District 19 of defendant, and Howard Madewell, president of the United Mine Workers Union Local at Wilder, Tennessee, who were in the first car of some 75 cars in the motorcade, told Manuel Powell, a supervisory employee of plaintiff, that they had come to shut down the mine and that it would stay closed until the company signed a contract with the union.

10. As a result of the action of the mob in trespassing upon plaintiff's property, and threatening its employees and its officers, the night shift workers did not enter the mine that night, and on the following day only 8 to 12 men of the normal

crew of approximately 160 men reported for work. Plaintiff was unable to operate the mine with this small number of men, and although it kept the mine in operable condition by the use of supervisory employees, it was unable to recruit a sufficient force of workers to resume mining.

11. The purpose of defendant in organizing and directing the march on the plaintiff's mine was to close its operation by force and to keep it closed until plaintiff signed a labor contract with defendant.

12. Defendant did not represent a majority of the employees of plaintiff, and yet on January 9, 1948, just three days before the unlawful march on the mine, J. W. Ridings and Hugh Brown, International Representatives of defendant, called upon the president of plaintiff, W. T. Ray, at his home, and told him again that the United Mine Workers of America represented a majority of the employees of the plaintiff, and that they wanted to talk to him about a collective bargaining agreement or contract. No contract was presented. However, Ray told these International Representatives that if the employees of plaintiff wanted the United Mine Workers of America to represent them he would be glad to discuss the matter with the Union representatives at any time.

13. Plaintiff was given no advance notice of defendant's purpose to march a mob of men on its mine and it was completely surprised thereby.

14. The only meeting between representatives of the defendant and the management of plaintiff took place on January 9, 1948. Prior to that time no meetings were requested by the defendant, and thereafter, following the unlawful closing of plaintiff's mine by defendant, no meetings were held or requested.

15. On January 13, 1948, the day after the mob had come to the mine and closed it, J. W. Ridings, International Representative, left Tennessee and went to Virginia, and did not return for a period of two weeks. W. T. Ray, the president of plaintiff, stayed at the mine for nine days after January 12, 1948, even though his life had been threatened, and then went to Florida where he remained until March 12, 1948.

16. Although the Union was furnished with his Florida address, no representative of the defendant got in touch with him. Upon his return to Monterey in March, the defendant still made no effort to meet with him or discuss the matter, yet J. W. Ridings knew that he was in Monterey. Mr. Ray then returned to Florida, where he stayed for two weeks before again returning to Monterey.

17. The plaintiff, through its officers, on account of the apparent animosity exhibited by the defendant toward W. T. Ray individually, decided to set up a new company to operate the mine and deliver the coal to plaintiff in railroad cars or on trucks at the mouth of the mine. In furtherance of this plan, the Tennessee Coal Company was incorporated under the laws of Tennessee, and a contract was entered into between the Tennessee Coal Company and the plaintiff by the terms of which the Tennessee Coal Company was to use the equipment of plaintiff to mine the coal and deliver it on railroad cars or on trucks at the mouth of the mine to plaintiff. Tennessee Coal Company was to be paid by plaintiff the actual cost of mining the coal plus 10 cents per ton. The coal belonged to plaintiff, both in the ground and at all times. The Tennessee Coal Company at no time had any interest in the coal itself, but only the contract right to mine and produce the coal. The plaintiff sold the coal, billed the same, and all proceeds from the sale of coal went to the plaintiff.

18. This plan was adopted by plaintiff in an effort to have the mine operate, and to reduce the damage suffered by plaintiff on account of its mine being closed. Plaintiff rendered aid and assistance to the Tennessee Coal Company in its efforts to mine and produce coal from the mine, and also the plaintiff paid certain salaries to some of the administrative officers and employees of the Tennessee Coal Company in addition to the contract price provided for.

19. Plaintiff, when its mine was first opened and it had begun to produce coal for the market, did not have a railroad to the mine and it was limited to truck sales and deliveries in the movement of coal. This continued until a railroad was built to the mine about two years prior to January 12, 1948. The plaintiff had built up and had a very unusual truck trade for the

movement and disposition of its coal, and a large portion of the coal produced by plaintiff from the mine was sold and transported by truck even after the railroad was completed to the mine.

20. On January 12, 1948, the plaintiff had in excess of 500 truck customers of different truck owners scattered over a large area in Tennessee and Kentucky; and there were in excess of 100 trucks at the mine for coal on January 12, 1948.

21. There were some trucks which went to the mine on January 12, 1948, for coal, which were forced to leave empty because they were prevented by the mob assembled by the defendant at the mine on that day from entering the property.

22. Trucks approaching the mine for coal were met on a private road which was blocked by representatives of the defendant, some of whom were armed with guns; and the truck drivers were told by the members of the United Mine Workers of America to "get to hell out of there", and not to come back until the management of the company had signed a contract.

23. One truck was at the bin being loaded with coal when the crowd arrived. Some of the members of the mob climbed upon the running board of the truck and told the driver that that would be the last load of coal that would come away from the mine until the union contract was signed by the management.

24. Also a short while thereafter, Ernest (Spooner) Stultz went to a coal dealer in Crossville, Tennessee, who had two trucks hauling from this mine up to January 12, 1948, and threatened to blow up his place of business if he even sold the coal that came from the plaintiff's mine.

25. The Court finds that the drivers and owners of the 500 or more trucks that had been doing business with the plaintiff at the mine were placed in such fear of bodily harm that they did not return to the mine for coal until a contract was signed by the management with defendant in July 1948.

26. On June 23, 1948, a portion of the railroad track running from the main line of the Tennessee Central Railroad to the plaintiff's mine was destroyed by a dynamite explosion. This

act placed the employees of the Tennessee Central Railroad in fear of great bodily harm and caused them to refuse to transport coal from the plaintiff's mine.

27. The evidence concerning the dynamiting of the railroad track on plaintiff's property shows that members of the United Mine Workers of America had possessed, handled, and transported dynamite on the same night the railroad track was blown up near to the point where the dynamiting took place.

28. Two of the members of the Union charged with this offense were arrested and were placed in jail at Cookeville, the county seat of Putnam County. On several occasions while they were in jail, Mr. Bell, an International Representative of the United Mine Workers of America, visited them and carried them cigarettes and things to eat; and on the day that the contract between the Tennessee Coal Company and the defendant was executed, on July 13, 1948, a request was made to the operating company by J. W. Ridings, a member of the International Board, that the prosecution of these two members of its union be dropped and not further pressed. The request was granted by the operating company and the prosecution was dropped. From all of the circumstances in the case it is a reasonable conclusion that the defendant is responsible for the dynamiting of the Tennessee Central Railroad track.

29. Tennessee Central Railroad Company, due to the acts and conduct above set out which placed its employees in such fear as to refuse to place cars at plaintiff's mine, did thereafter fail and refuse to place railroad cars at the mine and refused to handle or transport any coal, the product of plaintiff, and ceased to do business with the plaintiff for the period from June 23, 1948, to July 14, 1948.

30. The defendant, through its members, called a meeting of members of various locals in the area to convene at Monterey before daylight on the morning of July 2, 1948, to again march on plaintiff's mine and again force its closing.

31. A large number of the members of the said locals did meet at Monterey before daylight that morning but abandoned the plan to march on the mine after learning that it would not

open on that day. However, 15 or 20 of the members who had attended the meeting intercepted three employees of the Tennessee Coal Company while they were on their way to the mine, forced them to get out of their car, drew pistols on them, cursed and abused them with vile epithets, called them "scabs", and told them that their days operating in the mine without a union were ended and for them to tell the same thing to the other men working at the mine. The Union members who thus accosted the employees of the Tennessee Coal Company were led by one Willard W. Clemons who had assisted the defendant in its campaign of organizing the employees of other mines in the area.

32. That during the time between January 12, 1948, when the mine was closed, and July 13, 1948, when the contract with the defendant and the management of the operating company was executed, the defendant made arrangements with a large number of merchants in the area to supply the former employees of plaintiff who had refused to return to the mine for work, with groceries and other merchandise, and a large number of the non-working employees of the plaintiff took advantage of this offer and procured from these merchants groceries and other merchandise which were later paid for by the defendant.

33. The amount of money thus paid by the defendant to and for these employees of plaintiff who refused to work aggregated a large sum, probably well in excess of $70,000.00, and the Court further finds that this money was paid by the defendant for the benefit of such employees of plaintiff to keep them from returning to work for plaintiff.

34. The Constitution of the defendant prohibited the use of its funds for the payment of any sick benefit or damage of any kind to a member, and this prohibition in the constitution was in effect during the whole of the year 1948, and yet the defendant paid the sum of $5,000.00 out of its funds to Willard W. Clemons who had been very active in aiding and assisting defendant in its activities in connection with this mine. This payment was made to Clemons because of injuries sustained by him growing out of the incident above referred to on July 2, 1948, Clemons a few days after said incident having been

shot by a brother of one of the three men intercepted on their way to the mine. This payment was made by the defendant some two years later as a result of a letter written by Clemons to John L. Lewis, President of the defendant. The letter was not introduced in evidence but Clemons testified that he wrote it and that in the letter he advised President Lewis of his activities in organizing the plaintiff's and other mines, about his holding up the man on the way to the mine, and about his being shot a few days later. The payment check of $5,000.00 was signed by John L. Lewis as president of the defendant union and was delivered to Clemons by J. W. Ridings, an International Representative of the defendant and a member of its International Board.

35. The defendant on January 1, 1957, had $20,976,046.76 in cash and bonds.

36. The defendant in closing the plaintiff's mine and in keeping it closed, by force, by threats of bodily harm, and by acts of violence, and in conspiring with its members to accomplish the same purpose, acted wilfully and wantonly and with the intent to damage the plaintiff's business.

37. The mining conditions in plaintiff's mine on January 12, 1948, were good, with an unusual vein of coal averaging 5½ feet in thickness. Working conditions in the mine were good. The plaintiff had been developing the mine and increasing the output, and it was on January 12, 1948, and had been for some time prior thereto, producing over 1,000 tons of coal per working day, and the prospects for increase in output were good.

38. That the plaintiff had mined and sold during the year 1947, 217,179.77 tons of coal from the mine, about one-third of which was transported by truck and the remainder by railroad. At the end of the year 1947, the plaintiff had made a net profit on the business for the year of $374,149.17.

39. The plaintiff had a new contract, effective January 1, 1948, and continuing through 1948 and longer, with the Tennessee Valley Authority for a large quantity of coal to be shipped daily. This contract only covered sales of the fines or slack, which was the lowest price coal produced in the mine, and under the contract was to pay plaintiff $5.00 per ton. f. o. b.

mine. The truck coal of the mine was being sold on January 12, 1948, and just prior thereto at an average price of $5.91 per ton at the mine, and the price of coal that prevailed on January 12, 1948, continued to increase through the whole of that year. The average price for all truck coal sold from the mine during the year 1948 was $7.55 per ton.

40. The plaintiff's mine was operated nine days between January 1 and January 12, 1948, and this coal was sold at a net profit to plaintiff for the nine days in the total amount of $30,109.71, which was an average of $3.13 per ton.

41. On the whole record and in the light of the entire evidence, the Court finds that the unlawful conduct of the defendant in closing plaintiff's mine by force of a large mob, by threats, by acts of violence and other wrongful means, directly caused the plaintiff to suffer damages to its business for the year 1948, principally for the first half of that year. Considering the volume of business and profits for the year 1947, the plaintiff's prospects for increased business and lower costs in 1948, the contracts which the plaintiff had, the general conditions which prevailed in the industry, and the entire record, the Court is of the opinion and finds that a fair amount to compensate the plaintiff for its loss on account of the unlawful conduct of the defendant is the sum of $300,000.00.

CONCLUSIONS OF LAW

1. On the basis of the pleadings and the entire evidence, the plaintiff's claim of secondary boycott under 29 U.S.C.A., Section 187, raises or presents a substantial federal question, and consequently the Court has jurisdiction to adjudicate such claim.

2. The material and operative facts supporting the plaintiff's federal claim of secondary boycott are substantially the same as the facts supporting its non-federal or state claim of an unlawful conspiracy to injure its business.

3. The claim of secondary boycott and unlawful conspiracy are not separate causes of action but are merely different grounds to support a single cause of action, the cause of action being the violation by the defendant of the plaintiff's right to be free from wrongful interference with its business.

4. By reason of Conclusions 1, 2 and 3, above, the Court has jurisdiction of the non-federal claim of unlawful conspiracy to injure the plaintiff's business, under the doctrine of Hurn v. Oursler, 289 U. S. 238, 77 L. Ed. 1148. See also American Fidelity and Casualty Co. v. Owensboro Milling Co., 6 Cir, 222 F. 2d 109; Wertanen v. Welduction Corp., Dist. Court, Eastern Dist. of Michigan, 151 F. Supp. 440.

5. The acts and conduct of the defendant as set forth in the Findings of Fact above constitute an unlawful interference with the plaintiff's business, in violation of the plaintiff's rights under the common law obtaining in Tennessee, thereby entitling the plaintiff to recover damages proximately resulting therefrom. The means employed by the defendant to accomplish its purpose were improper and unlawful, consisting of harassment, violence and threats of violence against the plaintiff, its employees, customers, and other persons doing business with it. The effect of such conduct was to drastically interfere with and curtail production of coal at the plaintiff's mine during the year 1948. Brumley v. Chattanooga Speedway, 136 Tenn. 534; Shell Oil Co. v. State Tire & Oil Co., 6 Cir. 126 F. 2d 971; United States Construction Workers v. Laburnum Construction Corp., 347 U. S. 656, 98 L. Ed. 1025; Restatement of the Law of Torts, Vol. 4, Secs. 775, 779, 798 and 799.

6. The defendant is responsible for the acts and conduct of its agents, servants and representatives, in accordance with the general rules governing the relationship of master and servant or principal and agent. In this case the defendant is clearly shown to have been directly responsible for the conduct which brought about the wrongful closing of the plaintiff's mine and wrongful interference with its business to such extent as to make the defendant legally liable therefor. Cf. United Mine Workers of America v. Patton, 4 Cir, 211 F. 2d 742.

7. The plaintiff's cause of action is governed by the Tennessee ten-year and not the three-year statute of limitations and is, therefore, not barred. City of Atlanta v. Chattanooga Foundry and Pipe Works, et al., 6 Cir, 127 Fed. Rep. 23; affirmed in Chattanooga Foundry and Pipe Works v. City of Atlanta, 203 U. S. 390, 51 L. Ed. 241. The decision of the Supreme Court of Tennessee in Sanford-Day Iron Works v. Foundry and

Machine Company, 136 Tenn. 437, does not construe the Tennessee three-year statute of limitations but the statute pertaining to the jurisdiction of the Chancery Court, and cannot be regarded as disapproving by implication the long-standing decision in City of Atlanta v. Chattanooga Foundry and Pipe Works, et al, supra.

8. The plaintiff is entitled to recover compensatory damages against the defendant in the amount of $300,000.00.

9. By reason of the wilful and malicious conduct of the defendant in closing the plaintiff's mine and interfering with its business, the Court is of the opinion that the plaintiff is entitled to recover, in addition, punitive damages in the amount of $100,000.00.

10. The plaintiff is not entitled to recover its attorneys' fees against the defendant.

11. A form of judgment will be submitted to the Court in *acordance* with the foregoing findings and conclusions, taxing the costs of the action against the defendant.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Civil Action No. 1821

MEADOW CREEK COAL COMPANY, *Plaintiff*

v.

UNITED MINE WORKERS OF AMERICA, *Defendant*

Final Judgment

The above entitled cause came on for trial before the Court, sitting without a jury, and the Court having heard all of the evidence, the argument of counsel and having fully considered the same, together with the briefs submitted by the respective parties, has filed its findings of fact and conclusions of law and based upon such findings of fact and conclusions of law doth adjudge and decree that the plaintiff, Meadow Creek Coal Company, is entitled to have and recover of the defendant, United Mine Workers of America, compensatory damages in the sum of Three Hundred Thousand ($300,000.00) Dollars and also to have and recover of said defendant, United Mine Workers of America, punitive damages in the additional amount of One Hundred Thousand ($100,000.00) Dollars.

IT IS ACCORDINGLY ORDERED, ADJUDGED AND DECREED that the plaintiff, Meadow Creek Coal Company, have and recover of the defendant, United Mine Workers of America, the aforesaid total sum of Four Hundred Thousand ($400,000.00) Dollars, together with all the costs of the cause, for all of which execution will issue if necessary.

APPENDIX II

No. 13,470

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED MINE WORKERS OF AMERICA, *Appellant*,

v.

MEADOW CREEK COAL COMPANY, INC., *Appellee*.

Appeal from the United States District Court for the Middle District of Tennessee.

Decided January 21, 1959

Before MARTIN and MILLER, Circuit Judges; JONES, District Judge.

MARTIN, Circuit Judge. United Mine Workers of America (an unincorporated labor union or association) has appealed from a judgment against it in favor of Meadow Creek Coal Company, Inc. (a Tennessee corporation), entered by the United States District Court for the Middle District of Tennessee after a lengthy trial without the intervention of a jury. The award consisted of $300,000 compensatory damages and $100,000 punitive damages.

The district court rested its jurisdiction upon the pleadings and upon the entire evidence, for the reason that the coal company's claim of a secondary boycott as proscribed under section 187 of Title 29, U. S. C. A. [Labor Management Relations Act], presents a federal question. The judgment of the court was based upon forty-one separate findings of fact—all supported by substantial evidence and not clearly erroneous—and upon its conclusions of law. We shall undertake first to recite in narrative form the fact findings of the district court and then discuss its conclusions of law in the light of the main points made by the appellant.

The United Mine Workers of America, composed of a membership of over 300,000 with headquarters in Washington, D. C., has district and local offices throughout the United States and in Canada. It functions under a written constitution, providing for a president, a vice-president, and a secretary-treasurer. Its affairs are under the control of these officers and an international board whose members are elected from various districts in the United States. The international union collects monthly dues from its members at the rate of $4.25 each, remitted to the Washington office. Of this amount, $2.25 per member, per month, is retained at the international headquarters in Washington and $2.00 of each members dues each month is returned to the district from which the collection is made, to be divided between the districts and the local unions.

The international union has virtually all the rights and powers vested in corporations, including among others the right to sue and be sued in its own name, the right to adopt by-laws, to appoint representatives, agents and other employees, and the right to own and maintain property. The individual members are not liable individually for the debts and obligations of the organization, which, on January 1, 1957, possessed nearly $21,000,000 in cash and bonds.

The appellee coal company, organized in 1935, was actively engaged in mining and marketing coal in Putnam County, Tennessee. In 1944, at the instance of representatives of appellant, a consent election under supervision of the National Labor Relations Board was held, with the result that only one-third of the employees of the appellee company cast votes in favor of appellant as bargaining agent.

In the latter part of 1946, appellant sent into Putnam County, Tennessee, four organizers to campaign for the organization of all mines in that vicinity which did not have bargaining agreements with the international union. They were successful in organizing workers in several mines and passed much time in and around Monterey, Tennessee, which was located only two miles from the mine of the appellee company. They stayed there for the purpose of organizing Meadow Creek's employees, but failed to interest a majority of them.

As found by the district court, appellant determined in the latter part of December, 1947, to close down the appellee's mine by force; and, through its representatives in the area and with the aid of many of its members in that region of Tennessee and Kentucky, conspired to go in force upon the property of the appellee. In furtherance of this conspiracy, some 200 members of the United Mine Workers of America met on the morning of January 12, 1948, at Sparta, Tennessee, which is located about 22 miles from the mine of appellee. They formed a motorcade to the Meadow Creek Mine and arrived there in a body around 2:30 in the afternoon. The night and day shifts were changing. The mob blockaded appellee's private road and stationed guards between the intersection of that road with the public highway and the mine. No customers were allowed to enter the property of appellee. The mob, some of whom were armed, intercepted employees of the appellee company and, by persuasion and threats of bodily harm to them and their families if they did not do so, urged them to join the United Mine Workers of America.

Prior to this assembly there had been no labor trouble at appellee's mine. Including both night and day shifts, appellee had 169 employees on January 12, 1948—the date the mob gathered at the mine. A truck was backed up in front of the commissary and the mob crowded around it. From the bed of the truck, J. W. Ridings, a member of appellant's international board and the leader of the invasion; Hugh Brown, one of appellant's representatives; and Howard Madewell, President of the United Mine Workers Union at Wilder, Tennessee, addressed the assembly, including the mine workers. These speakers boldly asserted that appellee's mine would not be run another day unless the company sighed a contract with the union.

When they arrived at the mine, Madewell (President of Local at Wilder) and Stultz (representative of appellant's District 19), who were in the first of approximately seventy-five cars constituting the motorcade, told Powell (a supervisory employee of appellee) that they had come to shut down the mine and that it would stay closed until the company signed a contract with the union. The district court found that such was the obvious purpose of appellant in organizing and directing the march on the mine of appellee.

In consequence of the mob's action, the night-shift workers would not enter the mine that night and, on the following day, only eight or ten men reported for work. This was too small a force for operation of the mine; and, although the mine was kept in operable condition by the use of supervisory employees, the company was unable to recruit sufficient workers for the resumption of mining.

Only three days before the unlawful march on the mine, Ridings and Brown had called upon appellee's president (W. T. Ray) at his home. They told him that the United Mine Workers of America represented a majority of his employees and that they wanted to talk with him about a collective bargaining agreement. But they did not in fact represent the majority of the employees at that time and they presented no proposed contract. Nevertheless, President Ray told them that if appellee's employees wanted the United Mine Workers of America to represent them, he would be glad to discuss the matter with union representatives at any time. This was the only meeting, either requested or held, between the representatives of the union and the management of the company before the march on the mine on January 12, 1948. Appellee was given no advance notice of this *tour de force*.

On the day following (January 13, 1948), the leader, Ridings (member of the international board of appellant) left Tennessee and did not return for two weeks. President Ray—even though his life had been threatened—stayed at the mine until January 31 when he went to Florida, as was his custom, and remained there for about six weeks. The union was furnished his Florida address, but none of the representatives communicated with him. Upon his return to Monterey on March 12, 1948, no effort was made to arrange a meeting with him, although Ridings knew that he was in Monterey. President Ray went back to Florida and remained there for two weeks before coming back to Tennessee.

On account of the apparent animosity of the appellant toward appellee's president, the appellee company decided to organize a new company to operate the mine and deliver the coal to appellee, in railroad cars or trucks, at the mouth of the mine. To consummate this, a corporation known as the "Tennessee Coal

Company" was organized under the laws of Tennessee. This new company entered into a contract with Meadow Creek Coal Company under the terms of which the new corporation would use the equipment of appellee to mine the coal and deliver it to appellee, as planned. Appellee contracted to pay the Tennessee Coal Company the actual cost of mining the coal, plus *ten cents* per ton.

It was agreed that the coal, both in the ground and at all times, belonged to appellee; and that the Tennessee Coal Company had only the right to mine and produce it. Appellee sold the coal and received all proceeds from sales. This plan of operation was adopted in an effort to reduce the damage suffered by appellee as the result of its mine being closed. Appellee rendered aid to the Tennessee Coal Company in its mining and production operation and paid salaries to some of its administrative officers and employees.

At the time Meadow Creek's mine was first opened for production, appellee had no railroad to the mine and was limited to truck sales and deliveries in the movement of its coal. This situation continued until a railroad was built to the mine some two years prior to the events of January 12, 1948. Of necessity, appellee had built up a very unusual truck trade for the movement and distribution of its product, a large portion of which was sold and transported by truck even after the railroad to the mine had been completed. Indeed, on January 12, 1948, appellee had more than 500 truck customers scattered over a wide area of Tennessee and Kentucky. There were more than a hundred trucks at the mine on the critical date. Some of those that went to the mine for coal on that date (January 12) were forced to return empty because they were prevented by the assembled mob from entering upon appellee's property.

The district court found that trucks approaching the mine for coal were met on the private road, blocked by union representatives, some of whom were armed with guns; and the truck drivers were told by the members of the United Mine Workers of America to "get the hell out of there" and not to come back until the management of the company had signed a contract. One truck was being loaded with coal at the bin when the mob arrived. Some of the mobsters climbed upon the running board

of the truck and told the driver that his would be the last load of coal to leave the mine until a union contract was signed by the management.

Stultz, heretofore identified, went to a coal dealer in Crossville, Tennessee, who had been hauling coal from the mine in two trucks prior to January 12, and threatened to blow up his place of business if he even sold the coal which had come from the mine of appellee. The district court found that the drivers or owners of 500 or more trucks, used in doing business with appellee, had been placed in such fear of bodily harm that they did not return to the mine for coal until a contract had been signed by the management with the union in July of 1948.

Another consequential incident was related by the district court in its findings: On June 23, 1948, a portion of the railroad track running from the main line of the Tennessee Central Railroad to appellee's mine was destroyed by a dynamite explosion. This act placed employees of the railroad in fear of great bodily harm and caused them to refuse to transport coal from the mine. The evidence shows that, at a place near where the explosion occurred, certain members of the United Mine Workers of America had possessed, handled and transported dynamite on the same night on which the railroad tracks had been blown up.

While two members of the union charged with the dynamiting of the railroad were in jail at Cookeville, a representative of the United Mine Workers of America visited them on several occasions and brought them food and cigarettes. On the date of the execution of the contract between appellant and the Tennessee Coal Company, Ridings requested that company to drop the prosecution of the two union members charged with blowing up the tracks. The request was granted and no prosecution ensued. The district court found that it was reasonable to conclude from all the circumstances that the appellant was responsible for the dynamiting of the Tennessee Central's tracks.

Because of the foregoing acts and the conduct of appellant's members, employees of the railroad became fearful to the extent that they refused to place cars at appellee's mine. In consequence, the railroad company, itself, refused to furnish rail-

road cars at the mine, or to handle or transport any of appellee's coal, from the date of the dynamiting until July 14, 1948—the day following execution of the contract between the union and the Tennessee Coal Company.

Another relevant incident is narrated in the findings of fact of the district court. Members of the United Mine Workers of America had called a meeting of various locals in the area to convene at Monterey before daylight on the morning of July 2, 1948. The purpose of the meeting was to march again on the mine and force its closing. Numerous members of the local did assemble at Monterey; but they abandoned the planned march on the mine after learning that it was not open on that date. Nevertheless, fifteen or twenty members of the union who had attended the meeting intercepted three employees of the Tennessee Coal Company who were on their way to the mine, forced them to get out of their automobile, drew pistols on them, abused them and cursed them with vile epithets, called them "scabs" and told them that their days of operating the mine without a union were ended. They then instructed the employees to inform the other men working at the mine of what the employees had been told. These union members were led by Clemons, who had assisted in organizing (for appellant) the employees of other mines in the area. A few days later, Clemons was shot by a brother of one of the three men whom he had intercepted. Some two years later, Clemons wrote a letter to the president of appellant U. M. W. A. This letter was not introduced in evidence; but Clemons testified that, in the letter, he advised the union president of his organizing activities and of the occurrences leading to his being shot. He later received a check for $5,000, signed by appellant's president and delivered to him by Ridings—the central character in the union's activities in this case.

During the time between January 12, 1948, when the mine was closed, and July 13, 1948, when appellant and the management of the operating company entered into a contract, appellant arranged with numerous merchants in the area to supply groceries and other merchandise to former employees of the appellee who had refused to return to the mine for work. The cost to appellant amounted to more than $70,000, which

the court found was supplied to appellee's employees to keep them from returning to work.

The district court found that, in closing appellee's mine and in keeping it closed by force and threats of bodily harm and acts of violence, and in conspiring with its members to accomplish the same purpose, appellant acted willfully and wantonly and with intent to damage appellee's business.

Relative to the damage feature of the case, the district court found that the mining conditions in appellee's mine on January 12, 1948, were good, there being an unusual vein of coal averaging five and one-half feet in thickness; that working conditions in the mine were also good; that appellee had been developing the mine and increasing its output; and that on and sometime prior to January 12, 1948, the mine was producing more than 1000 tons of coal per working day, with good prospects for increasing output. It was found further that the appellee (during 1947) had mined and sold 217,179.77 tons of coal, about one-third of which had been transported by truck and the rest by railroad. Appellee's net profit on its business for the year 1947 had been $374,149.17.

Moreover, appellee had a new contract, effective January, 1948, and continuing through 1948 and longer, with the Tennessee Valley Authority for daily shipments of a large quantity of coal. This contract covered only the lowest price coal produced in the mine; and, under the contract, appellee was to receive $5.00 per ton, f. o. b. the mine. Just prior to January 12, 1948, trucked coal was selling at an average price of $5.91 per ton at the mine, with a price increase through 1948, the average price of all trucked coal sold from the mine during that year being $7.55 per ton. In the nine days of operation between January 1 and January 12 of 1948, the net profit to appellee from the mine amounted to $30,109.71, making a yield of $3.13 per ton average.

In its final finding (No. 41), the district court said: "On the whole record and in the light of the entire evidence, the Court finds that the unlawful conduct of the defendant in closing plaintiff's mine by force of a large mob, by threats, by acts of violence and other wrongful means, directly caused the plain-

tiff to suffer damages to its business for the year 1948, principally for the first half of that year. Considering the volume of business and profits for the year 1947, the plaintiff's prospects for increased business and lower costs in 1948, the contracts which the plaintiff had, the general conditions which prevailed in the industry, and the entire record, the Court is of the opinion and finds that a fair amount to compensate the plaintiff for its loss on account of the unlawful conduct of the defendant is the sum of $300,000."

In addition to compensatory damages, the court awarded the appellee $100,000 punitive damages.

Together with its findings of fact, the district court promulgated conclusions of law. Before discussing these conclusions, we shall reply to the first two points made by the United Mine Workers of America on this appeal. These points relate to service of process.

First, appellant denies that service of process on a regional director of District 50, United Mine Workers of America, was valid service on an "agent" of the appellant labor union "in his capacity as such", within the meaning of section 301 (d) of the Labor Management Relations Act of 1947 [29 U. S. C. A., 185 (b)]. That argument has been rejected by this court in *Claycraft Co.* v. *United Mine Workers of America*, 204 F. (2d) 600 (C. A. 6). But, even if the *Claycraft* case could be distinguished in principle, which we think it cannot be, we are of opinion that binding service of process upon appellant was made by service upon the Secretary of State of Tennessee, pursuant to section 8679.1 of the Supplement to Code of Tennessee of 1950, which provides that, where an unincorporated association or organization fails to appoint a process agent pursuant to the statute, process may be served upon the Secretary of State of Tennessee. See *McDaniel* v. *Textile Workers Union of America* (Tenn. App.), 254 S. W. (2d) 11.

The next point on appeal urged strongly by appellant goes to the *jurisdiction* of the United States District Court. Appellant insists that, in this case in which jurisdiction of the district court was grounded upon section 303 of the Labor Management Relations Act of 1947 [29 U. S. C. A. 187], the trial court, having

in effect held that there was no violation of the federal Act, had no jurisdiction to determine and decide the common law or non-federal cause of action.

In its first four conclusions of law, the court held: "1. On the basis of the pleadings and the entire evidence, the plaintiff's claim of secondary boycott under 29 U. S. C. A., section 187, raises or presents a substantial federal question, and consequently the court has jurisdiction to adjudicate such claim. 2. The material and operative facts supporting the plaintiff's federal claim of secondary boycott are substantially the same as the facts supporting its non-federal or state claim of an unlawful conspiracy to injure its business. 3. The claim of secondary boycott and unlawful conspiracy are not separate causes of action but are merely different grounds to support a single cause of action, the cause of action being the violation by the defendant of the plaintiff's right to be free from wrongful interference with its business. 4. By reason of Conclusions 1, 2 and 3, above, the Court has jurisdiction of the non-federal claim of unlawful conspiracy to injure the plaintiff's business, under the doctrine of *Hurn* v. *Oursler*, 289 U. S. 238, 77 L. Ed. 1148. See also *American Fidelity and Casualty Co.* v. *Owensboro Milling Co.*, 6 Cir., 222 F. (2d) 109; *Wertanen* v. *Welduction Corp.*, Dist. Court, Eastern District of Michigan, 151 F. Supp. 440." Cf. *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U. S. 656.

We are in accord with the conclusion of the district court on the question of jurisdiction. The scholarly opinion of Mr. Justice Sutherland in *Hurn* v. *Oursler*, 289 U. S. 238, would appear to be determinative of the issue. There, a suit was filed in the United States District Court seeking redress for copyright infringement which raised a substantial federal question and sought to obtain relief, as well, upon the ground that identical acts constituting the alleged infringement were also unfair competition under the state law. It was held by the Supreme Court that the federal question raised by the pleadings gave the court jurisdiction; and that, although the federal claim was rejected on the merits, the district court still possessed jurisdiction to decide the claim of unfair competition on its merits. *Siler* v. *Louisville and Nashville R. Co.*, 213 U. S. 175, 191, was

pointed out as having held that, where the trial court acquired jurisdiction by reason of the federal questions involved, the court "had the right to decide all the questions in the case, even though it decided the federal questions adversely to the party raising them, or even if it omitted to decide them at all, but decided the case on local or state questions only." *Lincoln Gas Co.* v. *Lincoln*, 250 U. S. 256, was also cited with the statement that there were many other cases where the rule had been stated and restated in substantially the same way. Numerous citations followed [289 U. S. 244]. See also another opinion of Mr. Justice Sutherland in *Baltimore Steamship Co.* v. *Phillips*, 274 U. S. 316; and the opinion of this court in *American Fidelity & Casualty Company* v. *Owensboro Milling Company*. 222 F. (2d) 109 (C. A. 6), cited *supra*.

In his conclusions of law in the case at bar, United States District Judge Miller cited also *Wertanen* v. *Welduction Corp.*, 151 F. Supp. 440, in which District Judge Levin said: "According to *Hurn* v. *Oursler*, 1933, 289 U. S. 238, 53 S. Ct. 586, 589, 77 L. Ed. 1148, when a case presents a substantial federal question the Court has jurisdiction to dispose of all grounds, either federal or state, which are 'in support of a single cause of action'."

Upon the facts found by the district court, as outlined at length in the early portion of this opinion, we think that this case presents only a single cause of action; that the claim of secondary boycott and unlawful conspiracy are not separate causes of action, but merely different grounds to support a single cause of action.

In its fifth conclusion, the trial judge stated that the acts and conduct of the defendant as set forth in the findings constituted unlawful interference with the plaintiff's business in violation of the latter's rights under the common law of Tennessee; and that this entitled the plaintiff to recover damages proximately resulting from such interference. The court further asserted that the means employed by the defendant to accomplish its purpose were improper and unlawful. These means consisted of harassment, violence and threats of violence against the plaintiff, its employees, its customers and all persons doing business with the plaintiff. The effect of defendant's conduct

was said to have interfered drastically with, and to have curtailed production of coal at plaintiff's mine during 1948.

In its next conclusion, the district court held the defendant responsible for the acts and conduct of its agents, servants and representatives, in accordance with the general principles of the law of master and servant, or principal and agent. It was concluded that the defendant was shown clearly to have been directly responsible for the conduct which brought about the wrongful closing of plaintiff's mine and the wrongful interference with its business to such extent as to place liability therefor upon the defendant association. We are in accord with these conclusions.

We think, as did the district judge, that the case falls within the principles of the authorities which he cited: *Brumley* v. *Chattanooga Speedway & Motordrome Co.*, 138 Tenn. 534; *Shell Oil Co.* v. *State Tire & Oil Co.*, 126 F. (2d) 971 (C. A. 6); *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U. S. 656; and *United Mine Workers of America* v. *Patton*, 211 F. (2d) 742 (C. A. 4). Substantially the same definition of civil conspiracy given in the *Brumley* case was stated by the Tennessee Supreme Court in *McKee* v. *Hughes*. 133 Tenn. 455, 459, where it was said: "A 'civil conspiracy' may be defined to be a combination between two or more persons to accomplish by concert of action an unlawful purpose, or to accomplish a purpose not in itself unlawful by unlawful means; the damage caused being the gist of any action."

A study of the opinion in the *Laburnum* case, supra, on account of its similarity in principle and in relevant facts, further demonstrates the correctness of the district court's conclusions. The comprehensive opinion of Judge Parker in *United Mine Workers of America* v. *Patton*, 211 F. (2d) 742 (C. A. 4), makes it clear that, in relation to a case of this character brought pursuant to the Taft-Hartley Act, it was undoubtedly the intention of Congress to apply the common law rule with respect to liability for the acts of an agent. The United States Court of Appeals held that, where a field representative of the international union was engaged in both its own business and that of the dis-

trial union in carrying on organization work, both unions were responsible for acts done by the field representative within the scope and course of his employment.

Appellant contends urgently that the instant action, having been commenced more than three years from its accrual, is barred by the Tennessee three-year statute of limitations (section 28-305, Tennessee Code Annotated). The district court held that the cause of action in controversy is governed by the ten-year (section 28-310, Tennessee Code Annotated) and not the three-year statute of limitations and is, therefore, not barred. The three-year statute [Tennessee Code Annotated, 28-305] reads as follows: "Actions for injuries to personal or real property, actions for the detention or conversion of personal property, civil actions based upon the alleged violation of any federal or state statute creating monetary liability for personal services rendered, or liquidated damages or other recovery therefor, when no other time of limitation is fixed by the statute creating liability, and actions for alienation of affections, shall be commenced within three (3) years from the accruing of the cause of action."

The ten-year statute [Tennessee Code Annotated, 28-310] reads thus: "Actions against guardians, executors, administrators, sheriffs, clerks, and other public officers on their bonds, actions on judgments and decrees of courts of record of this or any other state or government, and all other cases not expressly provided for, shall be commenced within ten (10) years after the cause of action accrued."

The district judge relied upon the authority of *City of Atlanta* v. *Chattanooga Foundry and Pipe Works et al.*, 127 F. 23 (C. A. 6), affirmed in *Chattanooga Foundry and Pipe Works* v. *City of Atlanta*, 203 U. S. 390. It was stated that the decision of the Supreme Court of Tennessee in *Sanford-Day Iron Works* v. *Foundry and Machine Co.*, 138 Tenn. 437, construes, not the Tennessee three-year statute of limitations, but a statute pertaining to the jurisdiction of the chancery court, and cannot be regarded as disapproving by implication the long-standing decision in *City of Atlanta* v. *Chattanooga Foundry and Pipe Works et al.*, *supra*.

The opinion in the *City of Atlanta* case was written by Judge Lurton, who had been Chief Justice of the Tennessee Supreme Court and was appointed from our court to the Supreme Court of the United States. The action was based upon the alleged violation of the Anti-Trust Law of the United States (Act of July 2, 1890, Ch. 647; 26 Stat. 210), providing that "any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any Circuit Court of the United States * * * and shall recover threefold the damages by him sustained." It was held that the action was not one for injury to property within the coverage of section 4470, Shannon's Tennessee Code, and was therefore not barred by the three-year statute and would be barred only by the ten-year statute of limitations.

Judge Lurton said. "That section [the three-year statute] plainly applies only to causes of action arising out of some injury to property, as distinguished from its detention or conversion. Property, either person or real, may be injured or damaged without its being either detained or converted. But whether the cause of action be an injury or damage to the property, or for its taking or detention, the suit must be brought within the same period. This distinction between the two kinds of injury to tangible personal property is of very ancient origin * * *.

"We find in the very carefully selected verbiage of section 4470 a recognition of the two kinds of injury to which tangible property is susceptible—one by a damage which does not affect the possession and the other by a taking or detention which does.

"While the precise question has not been decided by the Supreme Court of Tennessee, we do find an indisposition to give to the section any such broad and indeterminate meaning as would include a suit which does not involve any actual injury to property."

On appeal, the Supreme Court of the United States affirmed the judgment of this court. *Chattanooga Foundry and Pipe Works* v. *City of Atlanta*, 203 U. S. 390, 397, et seq. It was point-

ed out that "there is a sufficiently clear distinction between injuries to property and 'injured in his business or property', the latter being the language of the act of Congress."

Mr. Justice Holmes stated: "The material provisions of the Tennessee Code are as follows: By Article 2769 (Shannon, 4466), all civil actions are to be commenced within the period prescribed, with immaterial exceptances. By Article 2772 (Shannon, 4469), actions, among others, 'for statute penalties, within one year after cause of action accrues'. By 2773 (Shannon, 4470), 'Actions for injuries to personal or real property; actions for the detention or conversion of personal property, within three years from the accruing of the cause of action'. By 2776 (Shannon, 4473), certain actions enumerated, 'and all other cases not expressly provided for, within ten years after the cause of action accrued.' The Circuit Court of Appeals held that the case did not fall within 2772, or 2773, but only within 2776, and therefore was not barred. Although the decision is appealed from, as this question involved the construction of local law we cannot but attribute weight to the opinion of the judge who rendered the judgment, in view of his experience upon the Supreme Court of Tennessee. And although doubts were raised by the argument, we have come to agree with his interpretation in the main." The opinion concluded that "the dragnet at the end, 2776, catches all cases not 'expressly provided for'." The final remark was made that: "On the whole case we agree with the court below."

In the context, it is interesting to observe the similarity in pertinent aspect between the Sherman Anti-Trust Act under interpretation in the *City of Atlanta* case and the Taft-Hartley Act under interpretation here. The former contains this sentence: "Any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue, etc." The latter (Taft-Hartley) provides: "Whoever shall be injured in his business or property by reason of any violation of Sub-Sec. (a) of this section may sue, etc." Both acts seem plainly to distinguish between injury to a man's business and injury to his property. It seems logical to infer that injury to business or property, being covered in both acts, means that they are separate wrongs; and that the fact that the

three-year statute of limitations applies to *personal property* would make the ten-year statute under its catch-all coverage apply to injury to business. We agree with the conclusion of the district court that the *Sanford-Day Iron Works* case, *supra*, does not disapprove by implication the well established doctrine of the *City of Atlanta* case. The statute relating to jurisdiction of the chancery court was involved in the *Sanford-Day* case. The statute here under consideration was not even involved in the *Sanford-Day* case.

After consideration of cases cited in Judge Lurton's opinion in the *City of Atlanta* case and other Tennessee authorities brought to our attention, we hold the opinion, as did the district judge, that the ten-year statute of limitations of Tennessee and not the three-year statute applies to the present case.

In view of the substantially supported findings of fact of the district court, which have been detailed in the earlier part of this opinion, it would seem unnecessary to labor the point that there appears adequately sufficient evidence in the record to support the findings of the court that appellant set out by violence and threats of violence against appellee, its employees and customers, to accomplish its objective of "organizing" appellee's mine. Such conduct constituted an unlawful interference with appellee's business, in violation of the common law of Tennessee. See *Brumley* v. *Chattanooga Speedway*, 138 Tenn. 534, *supra*. No opinion of the Supreme Court of the United States has recognized the right of a labor organization to use violent means to accomplish the lawful ends of plant organization.

Appellant stresses in its behalf the authority of *United Brotherhood of Carpenters and Joiners of America* v. *United States*, 330 U. S. 395, 403. There, the court stated that the purpose and effect of section 6 of the Norris-LaGuardia Act was to relieve organizations, whether of labor or of capital, and members of those organizations from liability for damages or imputation of guilt for lawless acts done in labor disputes by some individual officers or members of the organization, without clear proof that the organization or member charged with

responsibility for the offense actually participated, gave prior authorization, or ratified such acts after actual knowledge of their perpetration.

The answer is that, in the instant case, the facts as found by the trial judge, based on substantial evidence, are that the operations of Ridings, international board member of appellant, and several of its other international representatives, were definitely either authorized by appellant, or ratified by it after obtaining actual knowledge of the unlawful acts perpetrated. As found by the district court, the purpose of appellant in organizing and directing the march on appellee's mine was, by force and violence, to close its operation until appellee should sign a labor contract with appellant. Indeed, Ridings, who was general director of the activities of the mob of marchers and the other union members who participated in the unlawful acts, was high enough in the hierarchy of the United Mine Workers of America to render that organization liable for the consequences of conduct of its members under his general leadership. Cf. *United Mine Workers* v. *Patton*, 211 F. (2d) 742 (C. A. 4).

In a recent opinion of this court (September 26, 1958), Mr. Justice Stewart (then a member of this court) said that a jury had been properly instructed by the district judge that the unions involved were responsible for the acts of their representatives only if the latter were engaged within the scope of their employment or authority; but that actual authorization of specific acts was unnecessary. [Citing 29 U. S. C. A., §.185 (e).] *John L. Lewis, et al.*, v. *Benedict Coal Corporation*, . . . F. (d) . . . (C. A. 6). This able jurist added: "Moreover, the fact, if it is so, that field representatives of the District lacked actual authority to call strikes is not controlling. These representatives were sent by the District to attempt to settle local disputes at the Benedic Mine. The declarations attributed to Scroggs all took place while he was on these missions. The calling of the strike was clearly one way to 'settle' a labor dispute, although a way not permitted by the agreement. Consequently the jury were amply justified in finding that Scroggs was acting within the scope of his employment when he made the declarations in question. Compare, *United Mine Workers*

v. *Patton*, 211 F. (2d) 742 (4 Cir., 1954), with *Garmeada Coal Co.* v. *International Union*, 122 F. Supp. 512 (E. D. Ky., 1954), aff'd 230 F. (2d) 945 (6 Cir., 1956)."

This court has held, in *United Brick & Clay Workers* v. *Deena Artware*, 198 F. (2d) 637, 642 (C. A. 6), that the court of appeals has no right to set aside findings of fact, either of the jury in an action by the employer against a labor union for damages caused by secondary boycott, or of a trial examiner in a National Labor Relations Board proceeding to enforce its cease and desist order against the employer, though such findings are inconsistent, if they are supported by substantial evidence on the record considered as a whole in each proceeding.

Undoubtedly, there was adequate substantial evidence to support the award of $300,000 compensatory damages for the wrongs and injuries inflicted upon appellee's business by the United Mine Workers of America. We are of opinion, moreover, that it rested within the sound discretion of the district judge to award $100,000 as punitive damages. The conduct of the appellant, through its agents, was of such wilful and malicious character as to justify an award of punitive damages. In its recent opinion in *International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), et al.*, v. *Russell*, 356 U. S. 634, 640, 641 (decided May 26, 1958), Mr. Justice Burton, speaking for the Supreme Court, said: "In the *Laburnum* case, *supra*, the union, with intimidation and threats of violence, demanded recognition to which it was not entitled. In that manner, the union prevented the employer from using its regular employees and forced it to abandon a construction contract with a consequent loss of profits. The employer filed a tort action in a Virginia court and received a judgment for about $30,000 compensatory damages, plus $100,000 punitive damages. On petition for certiorari, we upheld the state court's jurisdiction and affirmed its judgment. We assumed that the conduct of the union constituted a violation of § 8 (b) (1) (A) of the Federal Act [National Labor Relations Act]. Nevertheless, we held that the Federal Act did not expressly or impliedly deprive the employer of its common-law right of action in tort for damages."

For the foregoing reasons, the judgment of the district court is affirmed.

JUDGMENT

(Filed January 21, 1959)

Appeal from the United States District Court for the Middle District of Tennessee.

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Tennessee, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

Order Denying Petition For Rehearing

(Filed February 23, 1959)

The petition for rehearing filed by appellant herein is denied; and the suggestion that the case be heard by the court *en banc* is likewise denied. *N.L.R.B.* v. *Cambria Clay Products Co.*, 299 F. (2d) 433 (C. A. 6).

APPENDIX III

Section 12 of H. R. 3020 as found in Legislative History of the Labor Management Relations Act, Vol. 1, pp. 204-207:

"SEC. 12. (a) The following activities when affecting commerce, shall be unlawful concerted activities:

"(1) By the use of force or violence or threats thereof, preventing or attempting to prevent any individual from quitting or continuing in the employment of, or from accepting or refusing employment by, any employer; or by the use of force, violence, physical obstruction, or threats thereof, preventing or attempting to prevent any individual from freely going from any place and entering upon an employer's premises, or from freely leaving an employer's premises and going to any other place; or picketing an employer's place of business in numbers or in a manner otherwise than is reasonably required to give notice of the existence of a labor dispute at such place of business; or picketing or besetting the home of any individual in connection with any labor dispute.

"(2) Picketing an employer's premises for the purpose of leading persons to believe that there exists a labor dispute involving such employer, in any case in which the employees are not involved in a labor dispute with their employer.

"(3) Calling, authorizing, engaging in, or assisting—

"(A) any sympathy strike, jurisdictional strike, monopolistic strike, or illegal boycott, or any sit-down strike or other concerted interference with an employer's operations conducted by remaining on the employer's premises;

"(B) any strike or other concerted interference with an employer's operations, an object of which is to compel an employer to accede to featherbedding practices;

"(C) any strike or other concerted interference with an employer's operations, an object of which is (i) to compel an employer to recognize for collective bargaining a representative not certified under section 9 as the representative of the employees, or (ii) to remedy practices for which an administrative remedy is available under this Act, or (iii) to compel an employer to violate any law or any regulation, order, or direction issued pursuant to any law.

"(4) Any conspiracy, collusion, or common arrangements between competing employers to fix or agree to terms or proposed terms of employment of their employees, or to subject such terms or proposed terms of employment to common control or approval, not permitted as to their employees, or as to the representatives of their employees, with respect to the collective bargaining, concerted activities, or terms of collective bargains or arrangements of such employees.

"(b) Any person injured in his business, person, or property by an unlawful concerted activity affecting commerce may sue the person or persons responsible therefor in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy, and may recover the damages sustained by him as a result of such unlawful concerted activity, together with the costs of the suit, including a reasonable attorney's fee.

"(c) No provision of the Act of March 23, 1932, entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', shall have any application in any action or proceeding in a court of the United States involving any activity defined in this section as unlawful.

"(d) A person who is found to have engaged in any activity herein defined as an unlawful concerted activity shall be subject to deprivation of rights under this Act to the same extent as a person found to have engaged in an unfair labor practice under section 8(b) or 8(c).

"(e) Except as specifically provided in this section, nothing in this Act shall be construed to diminish the right of employees to strike or to engage in other lawful concerted activities. No provision of this Act, and no order of any court issued hereunder, shall be construed to require any individual to perform labor or service without his consent."

APPENDIX IV

Clayton Act

29 U. S. C. 52, 38 Stat. 738: *Statutory restriction of injunctive relief*

No restraining order or injunction shall be granted by any court of the United States, or a judge of the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Norris-LaGuardia Act

29 U. S. C. 104, 47 Stat. 70: *Enumeration of specific acts not subject to restraining orders or injunctions*

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

* * * *

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike, or unemployment benefits or insurance, or other moneys or things of value;

* * * *

29 U. S. C. 106, 47 Stat. 71: *Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents*

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

29 U. S. C. 113, 47 Stat. 73: *Definitions of terms and words used in chapter*

When used in this chapter, and for the purposes of this chapter—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations

of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

* * * *

LABOR MANAGEMENT RELATIONS ACT, 1947

29 U. S. C. 187, 61 Stat. 158: *Boycotts and other unlawful combinations; right to sue; jurisdiction; limitations; damages*

(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under sub-chapter II of this chapter.

(b) Whoever shall be injured in his business or property by reason or any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

29 U.S.C. 185. *Suits by and against labor organizations—Venue, amount, and citizenship*

* * * *

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Tennessee Code Annotated

28-305. *Property tort actions—Statutory liabilities—Alienation of affections.*—Actions for injuries to personal or real property, actions for the detention or conversion of personal

property, civil actions based upon the alleged violation of any federal or state statute creating monetary liability for personal services rendered, or liquidated damages or other recovery therefor, when no other time of limitation is fixed by the statute creating liability, and actions for alienation of affections, shall be commenced within three (3) years from the accruing of the cause of action. [Code, Sec. 1858, Sec. 2773 (deriv. Acts 1715, ch. 27, Sec. 5); Shan., Sec. 4470; Code 1932, Sec. 8598; Acts 1945, ch. 130, Sec. 1; mod. C. Supp. 1950, Sec. 8598].

28-310. *Actions on public officers' and fiduciary bonds—Actions not otherwise covered.* Actions against guardians, executors, administrators, sheriffs, clerks, and other public officers on their bonds, actions on judgments and decrees of courts of record of this or any other state or government, and all other cases not expressly provided for, shall be commenced within ten (10) years after the cause of action accrued. [Code 1858, Sec. 2776; Shan., Sec. 4473; Code 1932, Sec. 8601].

28 U.S.C. 1338, 62 Stat. 931—*Patents, copyrights, trade-marks, and unfair competition*

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, copyrights and trade-marks. Such jurisdiction shall be exclusive of the courts of the states in patent and copyright cases.

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent or trade-mark laws.

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MAY 16 1959
JAMES R. BROWNING, Clerk

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 853

UNITED MINE WORKERS OF AMERICA
Petitioner

v.

MEADOW CREEK COAL COMPANY, INC.
Defendant.

REPLY BRIEF OF MEADOR CREEK COAL COMPANY TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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RICH PRINTING COMPANY, NASHVILLE

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Supreme Court of the United States

OCTOBER TERM, 1958,

No. _____

UNITED MINE WORKERS OF AMERICA,
Petitioner

v.

MEADOW CREEK COAL COMPANY, INC.

REPLY BRIEF OF MEADOR CREEK COAL COMPANY TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

STATEMENT OF THE CASE

The jurisdiction of the Court, as alleged in the complaint, is invoked under Title 29 U.S.C.A., 187, (the Labor-Management Relations Act), and also invoked under Title 28 U.S.C.A., Sections 1331, 1332 and 1337 (R. 7a). The basis of the recovery sought by the plaintiff was the damages suffered by it to its business as the result of the unlawful actions on the part of the Petitioner herein, in violation of Federal statutes and of the Common Law of Tennessee, which under both laws only constitute one cause of action, viz., damage to its business.

The real crux of the lawsuit was the violation by the petitioner of the Labor-Management Relations Act, hereinafter referred to as the Taft-Hartley Act, and the common law of Tennessee against a conspiracy to damage the business of the Mining Company. Therefore, the two main issues presented to the District Court was to determine the rights of the Mining Company under the Federal statute, viz., the Taft-Hartley Statute, and under the Common Law of Tennessee.

Neither side demanded a jury, therefore the case was tried by the Court, whose duty it was to determine both the facts and the law applicable to the facts so found by the Court. Eleven days were consumed in the hearing of the evidence in the case by the Court, at which time the Court announced that before he heard the oral argument the Court asked that two separate briefs be filed by both sides, one a brief of the facts, and the other a brief of the law applicable thereto. Long and rather exhaustive briefs were filed of the facts in the case, as well as the law, after which the Court heard oral argument, which was quite full and lengthy. In due time thereafter the District Court delivered its opinion, in which a very detailed and exhaustive state of facts were found by the District Court. These facts were numbered by the Court, and were 41 pertinent facts that were found and established by the Court. This was followed by the District Court's conclusions of the law, resulting in the entry of a judgment in favor of the Mining Company in the sum of $300,000.00 compensatory damages, and $100,000.00 punitive damages. Both of these amounts were allowed under and by authority of the Common Law of the State of Tennessee. The District Court did not find as a conclusion of law that the Taft-Hartley Act was violated by the Petitioner, neither did the Court

find that the Taft-Hartley Act was not violated by it, but did clearly find that there was involved a very substantial Federal question, and therefore, there being only one cause of action, gave the Court jurisdiction to determine the case under the laws of Tennessee.

PETITIONER ATTACKS CONCURRENT FINDING OF FACTS

The petition for certiorari filed herein makes a very unusual, and we insist, absolutely unjustified attack upon the findings of fact of the District Court, and upon the findings of fact by the Court of Appeals, which are the same as that of the District Court, and which therefore become a concurrent findings of fact of the two Courts, which we insist is the final facts in the case, and which will be accepted by this Honorable Court without reviewing same. The petition herein asking this Honorable Court to review the facts constitutes the fifth time that demand has been pressed for adoption by the petitioner, and which has been refused four times. First, counsel representing the petitioner herein prepared and filed a long, many page brief with the District Court insisting upon the facts, as it does now in its petition herein. It was followed by long oral argument before the District Court, insisting upon the same facts now being insisted upon in the petition, and that Court, who saw the witnesses on the stand, declined to accept such facts, and found that they were not supported by the evidence in the case. In the Court of Appeals many pages in the long brief filed therein by the Petitioner herein insisted upon that Court to find and determine facts, the same as now is being insisted in the petition, and this was followed by extensive oral argument in that Court, urging and insisting upon that Court to agree with the Petitioner

herein that the Trial Judge was wrong in the finding of its facts, and that Court, in a rather exhaustive opinion, refused to adopt the facts submitted by the Petitioner, and expressly set out in detail, in the opinion of that Court the facts as the evidence clearly justified, just as the District Court had determined. Therefore, we insist if there ever was a case where the rule of concurrent finding of facts by the two lower Courts should apply, it is this case.

Our distinguished adversaries have spent so much time and effort in trying to impose their idea of the facts in the case, and having been repelled each and every time, they show signs in the petition herein of being somewhat exasperated, and in their zeal make reference in the petition to the Court of Appeals, it seems to us, in such manner as should have been omitted. To illustrate what we mean, on page 62, paragraph 5, of the petition, we quote:

> "In its approval, the Sixth Circuit did no more than to parrot the District Court . . ."

Also, in the same paragraph of the petition, is found the following language:

> "Unless by certiorari, this Court reviews and corrects the manifest errors committed by the District Court, with the *imprimatur* of a Federal Court of Appeals, a gross miscarriage of justice will have been promoted . . ."
>
> (Petition, 62.)

The Mining Company insists that the concurrent findings of fact by the two lower Courts is binding in this Court, and will be accepted, and it seems to us that there are exceptional reasons why the rule should apply to this particular case, because of the full presentation

of Petitioner's insistence of the facts presented both by oral argument and briefs to two Courts, and both Courts have found against it. And also the detailed manner in which not only the District Court found the facts, but the narration of the facts in the opinion of the Court of Appeals is unusual, and makes them clear, and it seems to us that it should be final. We cite, in support of this rule established by the Courts, the case of *Allen* v. *Trust Company of Georgia*, 66 S. Ct., 392, 326 U.S. 630. In that case the Court said:

> "Here two Courts have resolved that question in favor of respondent. They have found, as we have said, that Mr. Spaulding established the trusts to meet the necessities of his children by giving them property, free of all claims, tax or otherwise; and that in 1937 he released the power to amend to accomplish the purpose which he originally had, but which he later discovered had not been achieved. Those findings are sufficient to overcome the statutory presumption that the gifts being made within two years of Mr. Spaulding's death, were made in contemplation of death. Those findings, being concurrent findings of the two lower Courts, will be accepted here without much examination of the evidence."

A little further on in the Court's opinion, the Court said, speaking of the concurrent findings of fact,

> "This is a finding of fact which we are not at liberty to disturb on this record."
> 66 S.Ct., 392.

The Court in support of the above quotation cited the case of *United States* v. *O'Donnell*, 303 U.S., 501, 58 S. Ct., 708.

Now while we think it really unnecessary to state the facts found by the District Judge, and also by the Court of Appeals, yet there have been so many misstatements in the petition concerning the facts, and in order to get the real conduct and actions of the petitioner before the Court, we desire to narrate the facts which were found by the District Judge and the Court of Appeals, and in fact with practically no denial of these facts in the whole record. The petitioner's proof concerning these facts found by the Courts was purely negative as the record will disclose. These facts so found are narrated as follows:

FACTS NARRATED, AS FOUND BY TWO LOWER COURTS

The Meadow Creek Coal Co. had been engaged in mining of coal from 1935 on up to and past the date of this trouble on January 12, 1948, and had never had any labor troubles of any type or character up to January 12, 1948, at which time there were 169 employees actively engaged; that the petitioner herein was an unincorporated labor organization, with a membership of over 300,000; that it functioned under a written constitution with its headquarters in Washington, D. C., with District and Local offices in all of the States and in Canada; that it owned buildings in Washington, D. C., and owned real estate and personal property there. That it operated with a President, Vice President and Secretary and Treasurer, and carried on the business as detailed in that finding by the Court, the same as that of corporations; that it collects dues from members of all Locals at the rate of $4.25 a month, $2.25 of this is kept in Washington, the other sent to the District and to the Locals. It has a right to sue

and to be sued, and other details of functions which it had and which it exercised.

In 1944 the Petitioner herein called on Mr. Ray, the President of the Mining Company, and claimed that they had a majority of its employees that wanted to form a union and to negotiate a labor contract with the petitioner. Mr. Ray suggested then that they have an election, which they did have, and which was supervised by the National Labor Relations Board, and less than one-third of those voting voted in favor of the Union.

In the fall of 1946 the Petitioner sent J. W. Ridings, a member of the International Board, L. H. Bell, an International representative, Hugh Brown, an International representative, and Ernest Stulz, a representative of District 19, into Putnam County, Tennessee and adjacent counties, to organize all mines that did not have a contract with the Petitioner. These men, so sent and representing the Petitioner, succeeded in organizing the Workers in several mines in the area, but had failed to organize the employees of the Mining Company herein. So, after having worked some sixteen months without success, late in December, 1947, the representatives of Petitioner herein determined to close down the Mining Company's mine by force, and these representatives conspired with members of the other Locals in that part of Tennessee and Kentucky to go on to the property of the Mining Company in force and in large numbers on January 12, 1948, and in furtherance of this conspiracy, on January 12, 1948, approximately 200 members of petitioner formed a motorcade at Sparta, Tennessee, 22 miles from the mine, and marched on to the mine in a body, and arrived there about 2:30, just as the night

shift and the day shift were changing in the mine. The Petitioner, through its representatives there, blockaded the private road of the Mining Company from the highway to the mine, and placed cars at points near the highway, and would not allow customers to enter the property. That some of these 200 men, who were armed, intercepted the Mining Company's employees and by threats of bodily harm to them and their families, demanded them to become members of the Union. The mob crowded around in front of the commissary, and some one backed a truck up against the store, and three speeches were made, by J. W. Ridings, Hugh Brown and Howard Madewell, who was president of a Local some forty miles from there. In those speeches they told the employees of the Mining Company, both the day and night shifts, 169 in number, among other things, that the Plaintiff's mine would not run another day unless the Company signed a contract with the Union.

Upon arrival at the mine on January 12, 1948, Ernest Stultz, the representative of District 19, Howard Madewell, President of the Local at Wilder, Tennessee, who were the first ones to arrive of the motorcade of about seventy-five cars; when they got out of their car at the mine they told Manuel Powell, a supervisor employee of the Plaintiff, that they had come to shut down the mine, without any election, and it would stay closed until the Company signed a contract with the Union.

As result of the action of the mob in trespassing upon Plaintiff's property and threatening its employees and its officers, the night shift did not enter the mine that night, and on the following day only eight to twelve men of the 169 employees reported for work. Plain-

tiff was unable to operate the mine with the small number of men, although it kept the mine in operable condition, but was unable to recruit sufficient force of workers to resume mining.

The purpose of Petitioner in organizing and directing the march on the Plaintiff's mine was to close the operation by force, and to keep it closed until Plaintiff signed a labor contract with defendant.

The Petitioner did not represent a majority of the employees of Plaintiff; and yet, on January 9, 1948, just three days before the unlawful march on the mine, J. W. Ridings and Hugh Brown, International Representatives of Defendant, called upon the President of Plaintiff, Mr. Ray, at his home, and told him again that the petitioner represented a majority of his employees, that they wanted to talk to him about a collective agreement or bargaining contract. No contract was presented, but Mr. Ray told these representatives of Petitioner that if his employees wanted the United Mine Workers to represent them he would be glad to discuss it with them at any time.

The Mining Company was given absolutely no advance notice of Defendant's purpose to march a mob of men on the mine, and it was completely surprised thereby. The first and only time that the representatives of Petitioner ever called upon the management, from the time of the election in 1944, was on January 9, 1948. No meetings had been requested by the representatives of Petitioner, before the mob closed the mine on January 12, and none sought after January 12th. On January 13, 1948, the day after the mob had closed the mine, J. W. Ridings, Petitioner's representative, who was in charge for Petitioner, left Tennessee and went to Virginia, and did not return for a period

of two weeks. Mr. Ray, the President of the Mining Company, stayed at the mine for nine days after January 12, 1948, even though his life had been threatened, he then went to Florida, and although his address in Florida was furnished to the representatives of the Union, they did not get in touch with him. He returned from Florida to the mines early in March, and although J. W. Ridings knew that Mr. Ray was in Monterey, having returned from Florida, and that he remained in Monterey for two weeks, yet no representative of the Petitioner tried to get in touch with him, or to have any meeting with Mr. Ray.

After Mr. Ray had failed to get the mine opened, and deciding that, on account of the animosity exhibited by defendant toward him individually, threats of his life having been delivered to him, he decided to set up a new company to operate the mine and deliver the coal to plaintiff in railroad cars or on trucks at the mouth of the mine. In furtherance of this plan the Tennessee Coal Company was incorporated under the laws of Tennessee, and it was to produce coal to the mouth of the mine, and was to be paid by the Mining Company the cost of production, plus 10 cents per ton, the coal of course remaining that of the Mining Company, and was received by it at the mouth of the mine, and sold on the market. The Tennessee Coal Co. at no time had any interest in the coal, but only the contract to mine and produce the same. This plan was adopted by the Mining Company in an effort to get the mine running; and to reduce the damage suffered by the Mining Company on account of its mine being closed. The Mining Company rendered aid and assistance to the Tennessee Company in the effort to mine and produce coal from the mine, and even paid some of the salaries of the administrative officers.

The Mining Company, when first opening this mine and began to produce coal, did not have a railroad to the mines, and was limited to truck transportation and deliveries in the movement of its coal. This continued until the railroad was built about two years prior to the raid on the mine on January 12, 1948. Due to this lack of railroad, the Mining Company had built up and had a very unusual truck trade for the movement fo its coal, and even after the railroad was built a large portion of its coal was still sold to and moved by trucks. On January 12, 1948, the Plaintiff had in excess of 500 truck customers scattered over a large area in Tennessee and some in Kentucky, and as a matter of fact, there was in excess of 100 trucks at the mine for coal on January 12, 1948. There were some trucks that went to the mine for coal on January 12, 1948, that were forced to leave empty because they were prevented by the mob assembled by petitioner at the mine on that day from entering the property. Trucks approaching the mine for coal were met on the private road, which was blocked by representatives of the defendant, some of whom were armed with guns, and the truck drivers were told by members of the mob to get out and away from there, and not to come back until the management of the Company had signed a contract. One truck was at the mine being loaded with coal when the mob arrived. Some of the members of the mob climbed upon the running board of the truck and told the driver that that would be the last load of coal that would go away from that mine until the Union contract was signed by the management. Also, a short while thereafter, Ernest Stulz, one of the promoters of this mob, went to a coal dealer in Crossville Tenn., who had two trucks hauling from the mine up to January 12th, and threatened to blow up his place of business if he even sold the coal that came from the Plaintiff's mine.

In Finding of Fact No. 25, the District Court said:

> "The Court finds that the drivers and owners of the 500 or more trucks that had been doing business with the plaintiff at the mine were placed in such fear of bodily harm that they did not return to the mine for coal until a contract was signed by the management with the defendant in July, 1948."

The District Court found that on June 23, 1948, a portion of the railroad track of the Tennessee Central Railroad which served the Mine Company's mine was destroyed by dynamite explosion, and that this act placed the employees of the Tennessee Central Railroad in fear of great bodily harm, and caused them to refuse to transfer coal from the plaintiff's mine; and, further, that the evidence concerning this dynamiting of the railroad track on Plaintiff's property showed that the United Mine Workers of America had possessed, handled and transported dynamite on the same night that the railroad track was blown up near to the point where the dynamiting took place, and that two members of the Petitioner's Union were arrested and placed in jail at Cookeville; that Mr. Bell, who was Mr. Ridings' next man, and an International Representative of the Petitioner, visited these men in jail, and carried them cigarettes and things to eat, and that on the 13th day of July, 1948, when the contract between the petitioner and the Tennessee Coal Co. was executed, Mr. Ridings, who was in charge of the whole campaign from the beginning, and who represented the petitioner in the making of the contract, requested the President of the Tennessee Coal Company, Mr. Allred, to drop the prosecution against these two men; and the District Court also found, in view of all evidence and circumstances, that it was a reasonable conclusion that the

Petitioner herein was responsible for the dynamiting of the railroad track. The Court also found that due to the acts and conduct above set out, which placed the employees of the Railroad Company in such fear that they refused to place cars at Plaintiff's mine, and refused to handle or transport any coal the product of the Mining Company, and the Railroad Company ceased to do business with the Mining Company for the full period of June 23, 1948, to July 14, 1948; also that on July 2, 1948, the Defendant, through its representatives, called a meeting of members of various locals in and around the area, and they did meet before daylight on the morning of July 2d, planning to make another march or raid on the mine, and to force its closing. The mine was not being operated, they learned, and therefore did not make the raid. But some fifteen or twenty of them, led by Willard Clemons, went out on the road where they knew that some employees of the Mining Company would be coming to the Mine, and met three of them in a car, made them get out, told them that their days in operating that mine without a Union were ended, and told them to tell the other employees that that was true. They drew pistols on them, and abused them in very vile language. That during the time between January 12, 1948, and July 13, 1948, when the contract was signed, the defendant had made arrangements with a large number of merchants in the vicinity to supply employees of the Mining Company who had refused to return to the mines for work, with groceries and other merchandise. A large number of men who were staying out from work took advantage of this offer, and that the amount of money paid by this defendant to these merchants for the benefit of those men who were not going back to work was in excess of $70,000.00; and the Court further found that this money was paid by the Defendant for

the benefit of such employees to keep them from returning to work for the petitioner. That the Constitution of Petitioner prohibited the use of its funds for the payment of any sick benefits or damage of any kind; that this provision in the constitution was in effect during the whole of the year 1948, and yet the Defendant paid the sum of $5,000.00 out of its funds, being a check signed by Mr. John L. Lewis, President of Petitioner, and delivered it to Clemons by J. W. Ridings, the man who had been in charge for the petitioner all the while; and that this happened after a letter had been written by Mr. Clemons to Mr. John L. Lewis telling him of his activities in trying to organize the Mining Company's mine, and about his holding up the men on the way to the mine, and about his being shot a few days later. A financial statement was demanded of the petitioner, and a statement was filed simply showing the amount of cash and bonds on hand January 1, 1957, of $20,976,046.76. The Court said, in its Finding of Fact No. 36, as follows:

> "The defendant in closing the plaintiff's mine, and in keeping it closed, by force, by threats of bodily harm, and by acts of violence, and in conspiring with its members to accomplish the same purpose, acted wilfully and wantonly, and with the intent to damage the plaintiff's business.

The Court then found that the condition of plaintiff's mine on January 12, 1948, was in good condition, unusual vein of coal averaging 5½ feet in thickness. Working conditions in the mine were good; that the Plaintiff had been developing the mine and increasing the output, and it was on January 12, 1948, and had been for some time prior thereto, producing over a thousand tons of coal per working day; and that the prospects for increase in output were good. That the

Mining Company had mined and sold, during the year 1947, 217,179.77 tons of coal from the mine, about one-third of which was transported by truck, and the remainder by railroad. At the end of the year 1947 the Mining Company had made a net profit on the business for that year of $374,149.17; that the Mining Company had a new contract with the Tennessee Valley Authority for a large quantity of coal to be shipped daily during 1948, and the price to be paid for this coal was $5.00 per ton, f.o.b. mine, and it was only for the low grade coal known as "fines", or slack; and that the truck coal, on January 12, 1948, and just prior thereto, had an average price of $5.91 per ton at the mine, and these prices prevailed on January 12th, and continued to increase during the whole of that year, and that the average price of all truck coal sold from the mines loaded in the year 1948 was $7.55 per ton. The Court also found that the mine was operated nine working days between January 1st and January 12, 1948, and the coal was sold at a net profit to the Mining Company for the nine days for a total amount of $30,109.71—which was an average net profit per ton of $3.13.

The Court then said, summing up the whole of the facts found, based on all of the evidence, and on the whole record, and in the light of the entire evidence, the Court finds that the unlawful conduct of the petitioner in closing the mine by force, by a large mob, by threats, by violence, and other wrongful means, directly caused the Mining Company to suffer damages to its business for the year 1948, principally for the first half of that year, and considering the volume of business and profit for the year 1947, the plaintiff's prospects for increased business, and lower cost, for 1948, the contracts which the plaintiff had made, the general conditions which prevailed in the industry, and the

entire record, the Court is of the opinion and finds that a fair amount to compensate the Mining Company for its loss on account of the unlawful conduct of the defendant is the sum of $300,000.00.

The narration above set out of the findings of the District Court, and concurred in and expressly approved in detail by the Court of Appeals, is supported by the evidence in the case in each the every instance.

In the brief filed by the Mining Company in the Court of Appeals there was set out each and every one of these findings of fact by the District Court, forty-one in number, and reference to the Appendix which has been filed as the record in this case to abundantly support each and every finding of fact by the District Court. The facts were fully argued before the Court of Appeals, and on the first page of the opinion of that Court this language is used:

> "The judgment of the Court was based upon forty-one separate findings of fact—all supported by substantial evidence, and not clearly erroneous." (App. to Petition)

This same approval was given by the Court of Appeals to the 41 findings of fact by the District Court in practically the same language as above quoted several times during the opinion of that Court. The Court of Appeals heard this case on October 23, 1958, and delivered its opinion on January 21, 1959, three months after it was orally argued. That Court spent a great deal of time and consideration, and some eight pages of the first part of the opinion, finding the facts, which correspond with those of the Court below.

The detailed findings of fact by the District Court appear in printed record herein 31a to 42a and also the opinion of the Court of Appeals will be found in Appendix II to the petition.

The real truth concerning the facts found by these two Courts is that there is practically no controversy or no dispute by any evidence of any probative value. This case is really unusual from that viewpoint, because in most contested lawsuits there are sharp conflicts in the evidence offered by the two sides, but in this case the testimony offered by the Mining Company stands practically without denial or explanation.

The petitioner introduced thirteen witnesses on the trial, eleven of these witnesses were purely negative. Most all of them were members of the mob that made the raid on the mine on January 12th. None of these eleven witnesses denied a single threat or other act of violence that was proven by the numerous witnesses of the Mining Company that happened there on the 12th of January, or denied a single threat or violence that happened away from the mines after it was closed. Neither one of these eleven witnesses testified contrary to a single fact found by the District Court, and Court of Appeals. Each and all of them simply said that they did not see or hear those threats and acts of violence, and yet each of them also said that each and all of the threats and acts of violence could have been said or done, and they would not have heard or seen them. In order to make sure the Court understands the above statement we give below the names of those eleven witnesses, and citation to the printed record filed therein, to show conclusively that they are purely negative witnesses, and their testimony of no probative value. These wtinesses are as follows:

Tommy Vaughn (R. 815-816); Herman Wilson, (R. 836); Walter Whittaker, (R. 867); Millard Harwell, (R. 873-3); John Gardner, (R. 799-803); Earl Hodge, (R. 793-4-798); Martin Murphy, (R. 764-765-771-772); Wm. Prater, (R. 262); Roosevelt Sells, (R. 721-722-732-733); Walter Lewis, (R. 701); H. A. Higginbotham, (R. 802-831).

Petitioner in its petition puts a great deal of stress on what witness H. A. Higginbotham, Sheriff, testified concerning these threats, etc. We quote from this witness's testimony as follows:

"Q. Now, if I understand you, you don't remember anything, as you told Mr. Kramer, that was said in any of the speeches? Is that right, there that day?

A. I never paid any attention to what was said.

Q. They could have said most anything and you would not have remembered it, or paid any attention to it, is that right?

A. I might have paid attention to it, but I don't remember anything now." (R. 830a-831a).

He was then asked numerous other questions that had been shown by the Mining Company, and he said that all of them could have happened and he would not know it.

That is, in substance, what all of those eleven witnesses said. Of course it is useless to cite authorities to any great extent on the proposition that the universal rule applied by all Courts is that negative testimony has little, if any, value. In a case decided by the Court

of Appeals of Tennessee, and certiorari denied by the Supreme Court, the Court said:

> "Positive testimony is where a witness sees a thing occur, that he saw or heard it, as the case may be, while negative is where the witness says, if a thing occurred I didn't see it or hear it, as the case may be."

The Court further said in that case:

> "In a case like that the positive testimony of a witness should be accepted, since there is not necessarily a conflict."
> *Atkins* v. *Smith*, 9 Tenn. App., 212.

There being only thirteen witnesses offered by petitioner, there were only two that testified to anything affirmatively that affected the findings of fact of the two Courts. The witnesses were J. W. Ridings and Howard Madewell. Witness Ridings did deny that he made the threats in his speech that he made to the employees on January 12th. Of course there were many witnesses who testified differently, that he did make the statements, and the District Court saw him and the other witnesses on the witness stand.

The other witness that might be termed to a slight extent as a positive witness was Howard Madewell, and as near as he ever came to denying anything included in the Court's findings was that he made no threats.

We therefore submit that under these conditions and circumstances there can be no successful attack made upon the facts found by the two lower Courts.

That the Court may further understand that there is no merit in the attack in the petition on the facts

found by the two Courts, we desire to mention a few of the glaring misstatements in the petition, as a reference to what the record contains will clearly demonstrate the desperate position, apparently, that the Petitioner has taken. Just a few of these glaring and outstanding errors or misstatements will be referred to.

MISSTATEMENTS IN THE PETITION

1. On page 15 of the petition the statement is made that Willard W. Clemons was paid $5,000.00 by "District 19." This same statement is also repeated on page 32 of the petition; when, as a matter of fact, the $5,000.00 that was paid to Clemons was not the money of District 19, but was the money of the petitioner herein. It was by check drawn on a Washington, D. C. bank, signed by John L. Lewis, President of U. M. W. International, and John Owens, Secretary-Treasurer of the International Union, for $5,000.00. (R. 1007a). The petition also states that District 19 was given a release by Clemons when this check was delivered to Clemons. The truth is that a release was given by Clemons, and covered some twelve or fifteen different organizations and individuals, and No. 1 in the release was the International United Mine Workers of America. (R. 1004a).

2. The statement is made in the petition in several different places that the Petitioner had over 100 of the mining operations employees who had signed cards to become members of the Union prior to January 12, 1948. (Petition, 17) Now the citation they gave in the record about this is the testimony of L. H. Bell, who did testify, on direct examination, that he thought there was 100, or more, had signed cards, but this was

after Mr. Ridings had sworn that there were over 100 members of the Local at that time.

A subpoena duces tecum was issued to the Secretary of the Local to bring the roll call, which he did, Ford Williams being his name, and the roll of the Local Union showed 45 members all told, and the names of those members are set out, and will be found in the record filed herein. (R. 452a) Only five of those 45 members of the Union were employees of the Mining Company on January 12, 1948. (R. 466a)

The list furnished by the Secretary of the Local, and the list of employees were examined and compared in open Court, and it was found that only five of the Mining Company employees were members of the Union in January, 1948. (R. 466a)

Then Mr. Bell undertook to testify that he had cards that they had signed, and in order to make it official from his viewpoint, we assume, he said that he was the custodian of these cards. (R. 566a-557a) He was then asked to name some of the men who had signed cards prior to January 12th, and said that he could not name any; and he was then handed the list of the 169 employees of the Mining Company and asked to name which ones of those had signed cards prior to January 12th, and he studied the list for some time and named three men, Walter Lewis, Hershel Bell and Earl Hodge. (R. 556a) These three names were then investigated, and it was found that Earl Hodge signed a membership card on January 13, 1948, (Appendix, 557) and Walter Lewis signed a card on January 12, 1948, while the mob had charge of the mine, and he stated that he signed the card because he was told by a bunch of Union representatives there that day that there would be

no more work in that mine until a Union was organized, and he signed it while they were there. (R. 557a). Nothing could be learned of Hershell Bell.

3. It is stated in the petition that witness Holbert, who was threatened by a representative of the petitioner, that if he sold the coal that he had in his place in Crossville that came from this mine that his place of business would be blown up. The petition then states that Holbert did sell the coal, and his place was not blown up; but what they failed to state was that he was so exercised and so scared about it that he went to the Highway Patrol of the State, and to the Sheriff of the County, and asked for aid and assistance and protection. Then he also guarded the place at night for a period of a week to ten days, while he was disposing of the coal. (R. 256a)

4. The petition states that there was absolutely no testimony in the record that supported the finding of fact that the Mining Company had over 500 truck customers on January 12, 1948, and that there was over 100 trucks there at the mine that day. Now this is an awfully bold statement, when, as a matter of fact, in answer to a cross-question propounded by Mr. Kramer, Mr. Will Turner Ray, the President of the Mining Company, stated when he was asked how many truck customers it had in December, 1947, Mr. Ray answered as follows:

> "That would be a hard question; but I will say this: we have seen days when we loaded as high as 125 trucks. I have got my truck sales book. We itemize our coal sales, and I think with time I could give you 500 names of people that handle coal from our mine."

And Mr. Ray then proposed to get the record to show, not only how many, but the names of the truck owners and the distinguished attorney representing the petitioner dropped the subject. (R. 175a)

Also, witness W. E. Morgan was asked how many truck customers the mine had at the time of the raid on the mine. His answer was:

> "Well, there were several hundred, many days we would have a hundred or more trucks, so there were several hundred different trucks that traded with us regularly."

He further stated that many times trucks stayed there as much as two or three days to get a load of coal, they could not load them fast enough to get them out, and he named a good many towns, where they came from. (R. 302a)

Again, the exact amount, as shown by the accounts of the Mining Company by dollars and cents that actually was sold to trucks during the nine days in January was $16,451.19. The average price per ton for that coal was $5.91, which made a total of 2783 tons of coal that was sold to trucks during that nine days. That was an average of 309 tons per day for the nine days, and if you figure that each truck carried three tons, that would be 103 trucks that hauled coal from there that day on January 12th, 1948. The finding of the Court was that there was more than 100 trucks that day. Now it is to be remembered that there were any number of trucks that went there for coal that did not get it. So it is conclusive that there were more than 100 trucks there that day. (R. 66a-67a)

Fearful of making this brief too long, we will not mention other misstatements of fact in the petition, but there are numerous statements which are not supported by the evidence, which only demonstrates the wisdom of accepting the findings of fact by the District Court, who saw the witnesses and their demeanor on the stand, and also because the same facts were found by the Court of Appeals.

VIOLENCE

The Mining Company does not question the Labor Union's right to use lawful means to organize unorganized workers for a lawful purpose. But it does deny such a right to substitute force, threats, violence and mob rule for fair persuasion and peaceful and lawful tactics.

Every step taken by the petitioner was unlawful. The petitioner admits in the petition that it, through its agents, induced the Mining Company's employees to quit work, but say that it was lawful, and did it by "fair persuasion." Of course the District Court who saw the witnesses, and the Court of Appeals, found right to the opposite, and really we deem it unnecessary to offer support for these two Courts' findings of fact, yet this record is so full of acts of violence and threats and overt acts carrying out conspiracy that we feel it would be well to here remind the Court by citations to certain parts of the record of evidence that so abundantly supports the findings of these two Courts in the question of violence and threats, etc. And therefore we mention some of these outstanding and clearly proven acts, threats, etc., of the petitioner.

1. There had never been any labor trouble of any kind, type or character between the management and their employees in this mine before January 12, 1948. (R. 58a)

2. J. W. Ridings had planned for this raid of 200 men, not a single one of whom was employed by this Mining Company, to be made on the mine to close the mine and to put truck drivers in fear, to take place on January 12, 1948. (R. 731a- 474a- 637a-638a)

3. Petitioner's head man in charge, Mr. J. W. Ridings, deceived Mr. Ray by the ostensibly friendly call on January 9th, and Mr. Ray so received, and invited continued friendly relations, which was promised to him by Ridings. (R. 57a)

4. The mob, led by Ridings, trespassed upon the plaintiff's property, and took possession of it, and blockaded the private road from the State Highway 1500 feet away to the mine. (R. 114a-116a-276a)

5. The mob would not permit the employees of the Mining Company to leave the mine. (R. 279a-404a) When an employee of the Mining Company, Amon Key, some referred to him as Amon Randolph, started to leave for home, three or four of the mob ran out, caught him, and forced him back to the crowd. (R. 404a-407a)

6. Five or six of the members of the mob collected around Key or Randolph, and told him, "If he worked and lived, if he and his family lived," he would have to join the Union. (R. 404a)

7. When George Stamps, an employee of the Mining Company, a County Deputy Sheriff, ordered the opening of the blockade of the road, a member of the mob,

in the presence of others, told him "There is enough fellows here that you can't make us move any cars, we could kill you before you got started." (R. 402a)

8. One of petitioner's representatives, who made a speech to the employees, said, "If they went back to work without a Union contract the mine would be blown up on them, they would be buried alive." R. 372a)

9. The same speaker also boldly told the employees that the mine was not going to be operated until they joined the Union, and if they undertook to operate it without the Union, they might find their wives and children dead in a hollow around there. (R. 372a)

10. Four of the members of the mob stopped and held up Logan Vernon, who was there with a truck getting coal, and handed him a card and told him to sign it. He said he had no business signing it, and they said, "If you work here you will sign it." And two of the four had open knives in their hands, and another had his hand in his pocket. (R. 372a-373a)

11. The violence was so vicious that day that witness Vernon Logan described it as follows: "Well, I would term that as a sort of setting on a powder keg, with everybody talking and everybody carrying guns, and everybody looking for trouble. Just a serious thing." (R. 374a)

12. The violence became so great, and so many threats were made that Logan Vernon testified that he went to the Sheriff, who was sitting in a car, and said to him, "Are you going to let these men come out here on this private property and make open threats

against these men's lives and their wives, and things, and sit here in the car and do nothing about it?" And the Sheriff answered him, "Why, I am not even armed." (R. 381a)

13. The general condition in and around the mine and town of Monterey, as result of these threats and violent conduct was to put the whole community in a tense and expectant attitude, due to what took place on the 12th and following, which the witness stated was very belligerant. (R. 281a-280a)

14. Spooner Stultz, one of petitioner's field representatives, and Howard Madewell, President of Wilder Local, led the motorcade of the mob to the mine, and was the first car to arrive at the mine, and upon alighting from their automobile they immediatley announced to Manuel Powell, Electrical Engineer of the Mining Company, that they had come to close down the mine without any election, or anything else. (R. 407a)

15. J. W. Ridings said in his speech to the employees, "Not another lump of coal would come out of that mine until a Union contract was signed by the management." (R. 330a-403a-279a-372a-83a)

16. J. W. Ridings testified that he began his speech to the employees on January 12th by telling them that he had had a meeting with Mr. Ray on the 9th, three days prior thereto, and had asked him to sign a Union contract, and he refused to do so. (R. 586a) He later admitted on cross-examination that this was a false statement, that Mr. Ray did not refuse to sign a contract, that no contract was presented to him, and that Mr. Ray said they were welcome to come back at any time to discuss the contract. (R. 629a-630a)

17. Hugh Brown, petitioner's representative, made the same threats as Riding. (R. 329a-239a-403a-229a-372a)

18. Howard Madewell, the man who arrived first, and said that they were going to close the mine, made practically the same threats to employees as Ridings did. (R. 403a-279a-272a-83a)

19. Two members of the mob, one armed with a shotgun, stopped two trucks out on the State Highway, who were about to turn into the private road to the mine for coal. This man with the gun ordered the drivers of those two trucks, after telling them that there would be no more coal from that mine until a contract was signed with the Union, to get out of there, and did this in a very threatening manner. This created such fear in these truck drivers, when they saw this big crowd and these armed men, that they turned around and went back to their employer, some fifty miles, empty and without coal and refused to return. (R. 195a-201a-191a-192a)

20. Violent threats were made against the life of W. T. Ray, President of the Mining Company, and were communicated to him. (R. 862-564a-286a-372a and 340a)

21. Conditions were so aroused in and around the town of Monterey and the mine that the police force were placed on alert both day and night. (R. 329a)

22. Not only were the employees scared and afraid to return to work, but the whole community was aroused and was very uneasy. (R. 260a-262a-339a-406a-374a-264a-118a) The Tennessee Central Railroad Track was blown up with dynamite on the branch

leading from the main line to the mine, and employees of the Tennessee Central Railroad that served the mine were put in such fear that they refused to place cars at the mine, even after the track was repaired, and this continued from June 22nd to July 14th, the day after the Union contract was signed. (R. 407a-208a-210a-215a)

23. Five hundred truck owners refused to let their trucks return to the mine, due to the concerted action in putting their drivers in fear by threats with arms, etc. (R. 292a-175a-295a-66a-67a-302a)

24. Willard Clemons, one of the stars and hero, so to speak, of the petitioner, together with fifteen or twenty other Union members from other Locals, went out on the road leading to the mine and held up three employees when the management was trying to operate the mine, they drew two pistols on these three men, and abused them and threatened them with profane and abusive language, and applying epithets to them, and told them that there would be no more coal at that mine until a contract was signed with the Union, and told these men to tell the other employees the same thing. (R. 440a-448a)

25. Mr. John L. Lewis, President of petitioner, recognizing the effective work of Willard Clemons, and after being told by Clemons of all of the vicious plan that was made, and execution thereof, as he said, "from A to Z", paid Mr. Clemons $5,000.00, not out of the funds of District 19, but out of the funds of the petitioner. This was done by check signed by Mr. Lewis, as President, and John Owens as Secretary and Treasurer of the petitioner. (R. 603a-606a-614a-618a-1007a)

26. The petitioner, through its representative L. H. Bell, demonstrated its approval of the blowing up of the railroad track, by Bell calling on the guilty men in jail and carrying them cigarettes and fruits and other things. (R. 545a)

27. J. W. Ridings acknowledged responsibility of the dastardly trick of blowing up the railroad track by asking the management, when the Union contract was signed on July 13, 1948, that the prosecution against these two men for dynamiting the railroad be dropped. (R. 483a-515a-582a-883a)

28. Petitioner paid more than $189,000.00, as shown by the checks that passed through the Bank at Monterey, that were paid to the employees of the Mining Company who would not return to work, and, also, it is to be remembered that there never was any strike called by any organization, but was simply forced by the petitioner. (R. 107a)

29. Spooner Stultz, one of petitioner's representatives who was present on January 12, and the first one to arrive at the mine, and who either made or acquiesced in the statement by Howard Madewell that they had come to close the mine down, this same Spooner Stultz, a short while after the mine was closed on January 12th, went to Crossville, twenty-two miles from the mine, and told Clyde Holbert, who had two trucks hauling coal from the mine prior to January 12th, to his place of business in Crossville, that if he sold the coal he had in stock which came from this mine that the place would be blown up, and his trucks run off the road, and Stultz had a gun in his car when he threatened Holbert. (R. 258a)

30. Holbert was so exercised and uneasy after this threat that he went to the Sheriff of the County and to the State Highway Patrol pleading for help. In addition to that, he guarded his place of business every night for a period of about ten days. He had two trucks that were hauling coal, and the drivers refused to go back because they were scared and uneasy. (R. 256a)

31. Some of the mob were not only armed, as shown hereinbefore, but were drinking and had liquor, and drank same there on the grounds. (R. 566a-117a)

32. The City Marshal of Monterey guarded the home of W. T. Ray many nights after this raid on the mine, and put on extra policemen. (R. 340a-341a-286a)

32. The Sheriff of Putnam County appointed two deputy sheriffs to help preserve order and keep down violence. (R. 87a-827a)

33. Every move of the representatives of petitioner in this matter was unlawful, and the objective was unlawful, because they were seeking to force the execution of a Union contract that had the provisions of closed shop, which was in violation of the laws of Tennessee, and therefore in violation of the Taft-Hartley Act; they sought to force the employees to join the Union and to force the management to sign a Union contract. As the result of all of these violations and threats, the truck drivers and the railroad employees refused to go back to the mine, and therefore the truck owners and the railroad serving the mine ceased to do business with the Mining Company. (Whole testimony) (T.C.A., Sec. 50-209, and Taft-Hartley Act.)

34. To accomplish this illegal objective, the Petitioner planned to and did "induce and encourage" the employees of 500 truck owners to engage in a concerted refusal, in the course of their employment, to use, transport, or otherwise handle the product of the Mining Company, with the purpose and with the result of causing the truck owners to cease doing business with the Mining Company. (R. 122a) They also sought to and did have this same result with reference to the Railroad employees and the Railroad itself. (R. 208a-210a-215a) They also sought to do this same thing with the employees of the Tennessee Coal Company, which was producing coal for the Mining Company from this mine.

35. J. W. Ridings, the head man in this whole campaign, after he had closed the mine by force at a time which he knew was most remunerative to the owner during its whole history, actually left the State of Tennessee on January 13th, the next day after the raid, and remained out of the State for two weeks. He took this action in the face of Mr. Ray's invitation on January 9th, "You are welcome back any time," and to which, on that date, Ridings replied they would be back real soon. (R. 648a)

36. An entirely different attitude was shown by Mr. Ray. He tried his best to open the mine on the 13th of January, but failed. He remained at the mine office for nine days, contacting men, and doing other things to try to get the mine in operation, but failed; and he was contacted by no one representing the petitioner, and they made no effort to see him then, or even after that. (R. 85a-57a-282a-283a)

37. Employees of the mine refused to go back to work, and gave as their reason in every instance that they were afraid to do so, for their own safety, and for that of their families, they being aware of these threats that had been made. (R. 406a-85a-121a-152a)

38. The violence created by the representatives of the petitioner had been so great and widespread that the Governor of the State of Tennessee sent the State Commissioner of Labor, Mr. William Jacobs, and the State Mine Inspector, Mr. Welch, to Monterey, as stated by them, to both representatives of the petitioner and to the Mining Company, "to prevent a great calamity". This is the first contact of any kind or character that the representatives of petitioner, who had brought about all this great loss to the Mining Company, had shown that they had any interest whatsoever in settling this matter, and stopping this great loss, and relieve the employees of the well founded fear and tension brought about by the representatives of the petitioner.

39. Mr. Bales, President of District 19, when talking to Mr. Ridings after the mine was opened, and the management was trying to operate, was heard to say: "I will be damned if I want to sit up in Middlesboro and know that this mine is operated down here without a Union contract. I don't like that a damned bit." (R. 328a, 291a, 292a)

40. To demonstrate the general feeling of fear that prevailed in the community, the night the Railroad was blown up, a night policeman and a friend, went to the home of George Stamps, a deputy sheriff, about 11:30 to notify him of the explosion and they ran upon the porch of his home and began to shake the door, and Stamps testified, "I tried to find out who they were

and never could get any information. This night policeman was jerking the door and shaking it, and of course I was excited, too, expecting trouble, that I had learned about, and I shot through the door and killed the night policeman." (R. Vol. 1-407a)

After reading the above, can there be any wonder that the Trial Judge and the Court of Appeals found that the mine was closed and kept closed by "force, threats of bodily harm, and by acts of violence and conspiring with its employees to accomplish the same purpose, and acted wilfully, wantonly and with the intent to damage the plaintiff's business." Then, we also add, what other reasonable conclusions of law could the Trial Court or the Court of Appeals reach, except that found by the two Courts, about which the Petitioner is now complaining. It is hard to understand how our distinguished adversaries could have overlooked the threats, the violence and unlawful conduct of representatives of the petitioner with which this record is so replete.

It is also pertinent to remark here that the same insistence now being made in the petition herein concerning the matters under discussion at this time were made in the District Court and in the Court of Appeals, and both Courts held right to the opposite. It is also well to refer to the fact that a great majority of the employees of the Mining Company had been working for this Company for a good many years, and there had never been the least kind or type of labor trouble during that whole time. These employees were satisfied. Their wages that they were being paid were very slightly less than the Union scale, and they had no dues to pay. They were thoroughly satisfied, and this mob coming down upon them without a minute's notice, and

all of those threats being made, nothing could be expected except to scare them, and to cause them to continue to be scared for the safety of themselves and their families. There was no legal strike called at any time during this whole trouble; the men just quit work through fear, brought about by the conduct of the representatives of petitioner.

JURISDICTION.

The District Court's jurisdiction was specifically invoked by allegations in the complaint under four separate statutes of the United States. These statutes are: 29 U.S.C.A., 187 (Taft-Hartley Act); and 28 U.S.C.A., 1331 (Civil Actions Arising under the Constitution, Law, and Treaties of the United States); 28 U.S.C.A., 1332 (Diversity of Citizenship); and 28 U.S.C.A., 1337, (Civil Actions Arising under an Act of Congress regulating or protecting Commerce against restraints and monopoly).

Now we insist it is a well settled principle of law by the Supreme Court of the United States that if the lower Court's jurisdiction is properly asserted, because of a substantial Federal question, then its jurisdiction encompasses all grounds of recovery, both State and Federal, assuming, of course, that there is only one cause of action.

(a) The Taft-Hartley Act specifically conferred jurisdiction on the District Courts of the United States, and other Courts having jurisdiction of the parties in cases involving secondary boycotts and jurisdictional strikes. It is also clear, we insist, that the acts of representatives of the petitioner were illegal, as determined by the District Court and the Court of Appeals,

from the very beginning, that is, that petitioner's representatives, J. W. Ridings, et al., had planned and conspired among themselves, other representatives of Petitioner and with other members of different Locals to close the mine of the Mining Company by force, as they had failed to do it otherwise. Therefore, its actions were unlawful, both under the Federal statute and the laws of Tennessee, from the very beginning and all the way through. That is clearly shown by all the evidence, and judicially found by the two lower Courts. (Opinions of the two Courts)

It is also clear, we insist, that the secondary boycott was abundantly established by the proof, and this is clearly shown by the findings of facts by the Trial Judge and approved by the Court of Appeals in findings Nos. 25, 26 and 29.

However, there can be no doubt that the District Court had jurisdiction, regardless of its decision, on the merits of the case. That is, it would have to have jurisdiction in order to consider the case at all. It has been pointed out by the Supreme Court several times that the matter of jurisdiction of a lower Court to hear a case, and the decision on the merits thereof, are two entirely different things. In fact, the decision upon the merits cannot deprive the Court of Jurisdiction. On the contrary, it demonstrates that the Court had jurisdiction to hear and determine the merits of the case.

(b) Jurisdiction under 28, U.S.C.A., 1331. Jurisdiction under this Section we think is also appropriate, for this action arises under the Constitution and laws of the Unitedf States, as pointed out in the preceding paragraph.

(c) Jurisdiction under 28, U.S.C.A., 1337. This statute is appropriate, because the Taft-Hartley Act concerned itself only with commerce and industries affecting commerce.

(d) Jurisdiction under 28 U.S.C.A., 1332, Diversity of Citizenship Statute. We insist that the Court had jurisdiction under this statute because the Court found in its Findings of Fact that the petitioner exercised practically all of the powers and authority of a corporation, and others held to be judicial persons for diversity purposes. *American Federation of Musicians* vs. *Stein*, 213 Fed. (2d) 679. It is given the right to sue and to be sued, by statute, and exercises almost entirely all of the powers and duties characteristic of a corporation.

We do not insist that the Courts below decided all of these questions, but they held that the Federal Court had jurisdiction and could have been on several grounds. However, we do insist that there can be no doubt that the Court did have jurisdiction to try this lawsuit, and to settle it, and to settle it in full, and not just a portion of it. This Honorable Court has said very positively that the question of jurisdiction of a Court is not based upon the facts developed in the case so much as upon the allegations of the complaint. Jurisdictional questions are usually raised prior to the introduction of the evidence, as was done by motion in this case, and necessarily the Court must be governed by the allegations of the complaint. This question was clearly determined by the Supreme Court in the case of *Levering & Garrigues Co., et al.* v. *Morrin, et al.*, 289 U.S., 103, 77 L.Ed., 1062. In that case, Mr. Justice Sutherland, delivering the opinion, said:

> "The question of jurisdiction, as thus limited, is to be determined by the allegations of the bill,

and not by the facts as they may turn out, or by decision of the merits. *Mosher* v. *Phoenix*, 287 U.S. 29, 53 S.Ct., 67, 77 L.Ed., 148, and cases cited."

Again, Mr. Justice Sutherland said, in that case:

> "If the bill or complaint sets forth a substantial claim a case is presented within the Federal jurisdiction, howsoever, the Court upon consideration may decide as to the legal sufficiency of the facts alleged to support the same."

Certainly the allegations of the complaint make out a case under the Federal statutes, more particularly the Taft-Hartley Act, which governs the Court's jurisdiction to hear the case.

It is also clear, we insist, that the evidence as shown by the findings of fact by the two Courts clearly justify the allegations of the complaint, and show clearly that the Taft-Hartley Act was violated by the petitioner; that the conduct of the petitioner was unlawful from the beginning, and all the way through; it closed the mine by force and kept it closed, and that the secondary boycott was clearly sustained by the proof as to 500 truck owners doing business with the Mining Company; the Tennessee Central Railroad, which was transporting coal for the Mining Company, and the Tennessee Coal Company that was producing coal from the mine as best it could for the Mining Company.

While the District Court did not specifically find as a conclusion of law that the Taft-Hartley Act was violated by petitioner, neither did it find that the Act was not violated; but it did find facts that clearly showed it was violated, and for which the Mining Company was entitled to recover the damage it suffered.

The District Court, having jurisdiction of the case as above shown, found it also had jurisdiction and that it was its duty, to hear and determine the whole case. The complaint insisted upon compensatory damages under the Taft-Hartley Act (28 U.S.C.A., 187), and the common law of Tennessee, and also punitive damage under the common law of Tennessee.

Now we insist that there could only possibly be one cause of action under the evidence in this case, and under all of the findings of fact by the two Courts. There is a fundamental difference, as fixed by this Honorable Court, between the "cause of action" and the term "grounds of recovery". The single cause of action may involve one or many "grounds of recovery," and the multiplicity of the grounds of recovery do not transform a single "cause of action" into a multiple controversy. It remains single.

In one of the leading cases determined by this Honorable Court, of *Hurn, et al.*, v. *Oursler, et al.*, 289 U.S., 238, 53 S.Ct., 586, the second Headnote in that case is as follows:

> "Where two distinct grounds in support of single cause of action are alleged, and Federal ground is not plainly wanting in substance, Federal Court, even though Federal ground be not established, nevertheless has jurisdiction to dispose of the case on non-federal grounds."

The Mining Company had a right to carry on its lawful business, and the cause of action does not consist of the facts, but of the unlawful violation of a right which the facts show. It seems to us that this proposition was forever settled by this Honorable Court in the Hurn-Oursler case, supra, because in that case the

lower Court dismissed the case because of a lack of jurisdiction, and on the merits both. The Court of Appeals affirmed this decision, but the Supreme Court granted a writ of certiorari for only one reason, and that was to make clear that the dismissal of the Federal question on its merits did not prevent the Court from having jurisdiction to go on and determine the question involving the same cause of action under the State law, and the Court proceeded to hold in that case that the District Court did have jurisdiction to dispose of the case on the State law, even though the Federal question was not made out, it being only one cause of action. This same principle has been readjudicated by this Honorable Court many times since.

We refer to another case decided by the Supreme Court, *Baltimore Steamship Company* v. *Phillips*, 274 U.S., 316, 47 S.Ct., 600. In that case the matter of single cause of action with different grounds of relief are explained very fully, and it was held in that case that a suit in the Federal Court involving an accident, which resulted in a decision on the merits was res adjudicata as to the second suit involving the same matter later brought in the State Court, and based upon State law. In the opinion, the Supreme Court said:

> "The effect of a judgment or decree as res adjudicata depends upon whether the second action or suit is upon the same or different cause of action . . . If upon the same cause of action the judgment or decree upon the merits in the first case is an absolute bar to the subsequent action or suit between the same parties, or those in privity with them, not only in respect to every matter which was actually offered and received to sustain the demands, but also as to every ground of recovery which might have been presented."

The Court further said in that case:

"The injured respondent was bound to set forth in his first action for damages every ground of negligence which he claimed to exist, and upon which he relied, and cannot be permitted, as was attempted here, to rely upon them by piece-meal under successive actions to recover for the same wrong and injury."

"Here the Court below concluded that the cause of action set up in the second case was not the same as that alleged in the first, because the grounds of negligence pleaded were distinct and different in character, the ground alleged in the first case being the use of defective appliances, and in the second, the negligent operation of the appliances, by the officers and boat employees. Upon principle, it is perfectly plain that the respondent suffered but one actionable wrong, and was entitled to but one recovery, whether his injury was due to one or the other of several distinct acts of alleged negligence, or to combination of some or all of them. In either view, there would be but one single wrongful invasion of a single primary right of the plaintiff, viz., the right of bodily safety, whether the acts constituting such invasion were one or many, simple or complex.

"The cause of action does not consist of facts, but of the unlawful violation of a right which the facts show . . . The injured respondent was bound to set forth in his first action for damages every ground of negligence which he claimed to exist, and upon which he relied, and cannot be permitted, as was attempted here, to rely upon them by piece-meal in several actions to recover for the same wrong and injury."

The laws of Tennessee will not permit a cause of action to be split:

Fire Ins. Co. vs. *Cleveland*, 162 Tenn., 88;
Sadler vs. *Apple*, 28 Tenn., 342;
Railroad vs. *Matthews*, 115 Tenn., 172 and many other cases.

In the case at bar one right only is involved, viz., the right to conduct a lawful business, free from unlawful interference. In the Baltimore Steamship case it was the right to remain free of personal injury. In the Oursler case it was the literary property right of an author. In the present case it was the right of the Mining Company to carry on a lawful business.

The Sixth Circuit reaffirmed this rule in the case of the *American Fidelity & Guaranty Co.* v. *Owensboro Milling*, 222 Fed. (2d) 109, (6th Circuit, 1955). There are also other cases decided by this Honorable Court declaring the same rule. We cite the case of *Benderup* v. *Putty Exchange*, 263 U.S., 291, 44 S. Ct., 96. In that case, this Court said:

"Jurisdiction is the power to decide a justiciable controversy, and includes questions of law, as well as of fact. A complaint setting forth a substantial claim under Federal Statutes presents a case, within the jurisdiction of a Court, as a Federal Court. But this jurisdiction cannot be made to stand or fall upon the way a Court may chance to decide an issue, as to the legal sufficiency of the facts alleged, not more than upon the way it may be decided as to the legal sufficiency of the facts proven. The decision, either way, upon either question, is predicated upon the acceptance of jurisdiction, not upon the absence of it. Jurisdiction, as distinguished from merit, is wanting

only where the claim set forth in the complaint is so insubstantial as to be frivolous, or, in other words, is plainly without color of merit."

See, also, *Bell* v. *Ohio*, 327 U.S., 678, 66 S. Ct. 773.

On the question of single and multiple causes of action, we cite the cases of:

American Fire & Casualty Co. v. *Finn*, 341 U.S. 6, 71 S. Ct., 534;

Sullman Co. v. *Jenkins*, 305 U.S., 534, 59 S. Ct., 347.

ONLY A SINGLE CAUSE OF ACTION EXISTS IN THIS CASE

The complaint alleged a violation of a single right, the right to conduct a lawful business, free from unlawful interference, and it is the violation of this right which constitutes the cause of action. The claim of a secondary boycott provided for in the Taft-Hartley Act, the common law conspiracy, as determined by the Courts of Tennessee, are clearly supported, and violations of both fully demonstrated, by the facts as they developed in this case.

Secondary boycott has conspiracy inherently in its nature. It is necessary for more than one person to engage in the proscribed conduct in order for the secondary boycott to come into existence. This, in legal terms, under the laws of Tennessee is an unlawful conspiracy. We assert that there was one conspiracy aimed at accomplishing an unlawful purpose, to force the closing of the mine through violence and threats, and to damage plaintiff's business, thus forcing the

Meadow Creek Coal Company to sign a contract with the Union, and to force the employees to become members of the Union. Also to force the management to sign a contract that was unlawful under the laws of the State of Tennessee, and therefore unlawful under the Taft-Hartley Act, (Tenn. Code, Ann., Sec. 50-209), and in the operations to accomplish this unlawful purpose, the petitioner violated the right of the Plaintiff to conduct a lawful business. The grounds of recovery are different, perhaps, but that presents no obstacle, because the Baltimore Steamship case and others hereinbefore cited clearly demonstrate that different grounds of recovery in no way affects the singleness of a cause of action. The District Court had jurisdiction of the Federal question, it being indeed a very substantial one, and under the relevant authorities the Court's jurisdiction extends to every other ground of relief that could be asserted under this cause of action. A failure to assert any grounds of relief, other than the violation of the Taft-Hartley Act, would preclude such assertion at any later time, or in any other form.

There certainly is nothing new for this Honorable Court to determine in this cause on these matters, that has not been fully determined heretofore.

UNLAWFUL CONSPIRACY

The findings of fact of the two lower Courts, abundantly supported by the proof, show the formation of an unlawful conspiracy by the petitioner, its officers, agents, representatives, members, etc., aimed at the plaintiff in this case, the commission of overt acts in furtherance thereof, and substantial damage resulting to the plaintiff's business. (Findings of Fact).

There can be no doubt that the facts in this case, as determined by the two Courts, show an accountable conspiracy under the laws of Tennessee.

In the case of *Brumley* v. *Chattanooga Speedway*, 138 Tenn., 534, the Supreme Court of Tennessee said:

> "A civil actionable conspiracy in Tennessee is a combination between two or more persons to accomplish by concert an unlawful purpose, or to accomplish a lawful purpose by unlawful means."

In support of the above statement we also cite *Hutton* v. *Waters*, 41 Tenn., Court of Civil Appeals, 582.

Of course a conspiracy to accomplish an unlawful purpose by an unlawful means is actionable conspiracy. *Duplex Printing Press Co.* v. *Deering*, 354 U.S., 443, 41 S.Ct., 172.

In the case at bar the findings of fact by the two Courts disclose that the petitioner conspired with and among its officers, agents, etc., and others, to injure or destroy the business of the Mining Company, and among the purposes of the conspiracy was to compel plaintiff to execute a collective bargaining contract, unlawful both under the laws of the State of Tennessee, and the Federal law. (Tennessee Anti-Closed Shop law, T.C.A. 50-208, et seq.) This statute was passed upon by the Supreme Court of Tennessee, and the Act held constitutional, and being the policy of the State, all contracts made with that provision are illegal and absolutely void. *Mascari* v. *International Brotherhood of Teamsters, etc.*, 187 Tenn., 345, 215 S.W. (2d), 779.

It is also a well established principle of law that all persons who participate in an unlawful act, or in furtherance of a conspiracy, are equally liable as co-conspirators. *Calcutt* v. *Gearing*, 271 Fed., 220.

SUBSTANTIAL FEDERAL QUESTION INVOLVED

As stated earlier in this brief, the facts as found by the two Courts clearly show, that it was a conspiracy under the laws of Tennessee; that the secondary boycott prohibited by the Taft-Hartley Act was involved, a wide area geographically, with a great many people, both members of the U.M.W., and non-members. There was more than one type of secondary boycott shown in this case. We do not deem it necessary to go into details, as we have already demonstrated hereinbefore very clearly that secondary boycotts, brought about by various acts of violence and force, and by persuasion and threats, the petitioner induced and encouraged the employees of the Tennessee Central Railroad Co. to engage in a concerted refusal to transport or otherwise handle any goods, articles, or materials or commodities, or to perform any services for the Mining Company; the result thereof was to force the Tennessee Central Railroad Company to cease handling or transporting the products of the Mining Company, and to cease doing business with it.

We quote here the exact language of the Taft-Hartley Act, 29 U.S.C.A., 187, which reads as follows:

> "(a) It shall be unlawful for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees

of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service, where an object thereof is:

"(1) Forcing or requiring any employer or self employed person to join any labor or employer organization, or any employer or other persons to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer or processor or manufacturer, or to cease doing business with any other person."
(U.S.C.A., 187a (1)

Sub-Section (B), under the same section of the Act as above cited, gives a right to bring suit in the U. S. District Court to collect any damage a person may suffer to his business or property by violation of the statute above set out.

The findings of fact by the two lower Courts clearly show that the petitioner, by violence, dynamiting property, threats, and other violent conduct, induced and encouraged the employees of the Tennessee Central Railroad concertedly to engage in a secondary boycott, and that the railroad, therefore, was compelled, or at least did refuse to deliver cars to transport the product of the mine, and quit doing business with the Mining Company. This also applied to 500 truck owners. All of these activities come within the proscription set out in Sec. 29, U.S.C.A., 187. And this Honorable Court has held that the employees of the Railroad Company are not excluded from this portion of the Taft-Hartley Act.

In support of this proposition we cite:

International Brotherhood of Electric Workers v. *N.L.R.B.*, 341 U.S. 694, 71 S.Ct., 954; *International Rice Milling Co.* v. *N.L.R.B.*, 183 Federal (2d), 21, (Fifth Circuit.)

Also, in the case decided by this Court, *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al.*, v. *New York, New Haven & Hartford R.R. Co.*, 350 U.S., 155, 76 S.Ct., 227. This case is popularly referred to as the "Piggy Back" case, and in that case Mr. Justice Minton said:

> "We think it clear that Congress, in excluding any person subject to the Railway Labor Act from the statutory definition of employer, carved out of the Labor, Management, Relations Act the Railroads' Employer-Employee relationship, which were and are, governed by the Railway Labor Act, but we do not think by so doing Congress intended to divest the N.L.R.B. of jurisdiction over controversies.
>
> "Furthermore, since Railroads are not excluded from the Act's definition of "person", they are entitled to Board protection from the kind of unfair labor practice proscribed by Sec. 8 (b) (4) (4)".

It therefore follows that there was clearly a secondary boycott shown with reference to the employees and the operator of the Tennessee Central Railway, as well, as to the truck owners.

TRUCK BOYCOTT

We do not deem it necessary to go into the facts as found by the two Courts, but they do clearly show that the secondary boycott was proven by the evidence, and that some 500 trucks belonging to people that were doing business with the Mining Company on Jan. 12th, when the mob raided the mine, and that these truck drivers were put in such bodily fear that they refused to return for coal, even after the mine was opened, and undertaken to be operated on April 14. That therefore the owners of the trucks ceased to do business or to transport any of the product of the Mining Company. This specific item was covered by the finding of fact No. 25 and other findings of fact. (R. 37a)

Petitioner puts great stress on the case of *National Labor Relations Board* v. *The International Rice Milling Co.*, 71 S. Ct., 961. There is very little similarity in that case to the one at bar. In that case there was only one truck involved, and it was on the grounds where the strike was in effect. In the case at Bar there were 500 trucks, and all of which were affected to such an extent by the violence and threats of the petitioner, through its agents, that the drivers refused to go back and get any more coal.

This Court, in the case of *N.L.R.B.* v. *Denver Building & Construction Trades Council, et a.*, 71 S. Ct.; 943, held:

> "It is not necessary to find that the sole subject of the strike was that of forcing a contractor to terminate sub-contractor's contract."

This is emphasized by the legislative history of this Section, as stated in the Denver case, in which Senator

Taft, the sponsor of the Act, is quoted: "Sec. 8 (d) (4), relating to illegal strikes and boycotts, was amended in conference by striking out the words 'for the purpose of', and inserting the clause, 'where an object thereof is'. (98 Congressional Record, 68-69)."

There can be no doubt that this petitioner acted unlawfully right from the beginning. However, the Supreme Court said, in the Denver case just hereinbefore cited, that a secondary boycott can be influenced and brought about, and therefore a violation of the Taft-Hartley Act, as the effects of a primary strike, even though it is lawful.

In that case the Supreme Court said:

> "Petitioners contend that Sec. 8(c) immunizes peaceful picketing, even though the picketing induces a secondary boycott made unlawful by Sec. 8(b)(4). The Board reached the opposite conclusion, and the Court below approved the Board's order as applied to the facts of this case, which is recognized as amounting to 'bare instigation' of a secondary boycott. We agree with the Board."

The words "induce" or "encourage" are broad enough to carry in them every form of influence and persuasion. There is no legislative history to justify an interpretation that Congress by these terms has limited its proscription of secondary picketing to cases where the means of encroachment amount to either reprisal or force, or promise of benefit. But in the case at bar, this principle is not involved due to the violence and unlawful acts of the petitioner.

These same facts and applicable law apply to the employees of the Tennessee Coal Company, which was

trying to operate the mine from April 14th to July 13th, and to produce coal for the Mining Company herein.

TENNESSEE COMMON LAW AS TO CONSPIRACY

It is unlawful in Tennessee to conspire to injure the lawful business of another. An unlawful conspiracy is defined by the Supreme Court of Tennessee in the following language:

> "A civil conspiracy may be defined to be combination between two or more persons to accomplish by concert of action an unlawful purpose, or to accomplish a purpose not in itself unlawful, by unlawful means, the damage caused being the gist of any action."
>
> *McKee* v. *Hughes*, 133 Tenn., 459.

There is also a case in Tennessee, and reported by the Court of Civil Appeals, where certiorari was denied by the Supreme Court, being that of *Donnelly* v. *Jackson Bros.*, 2 Tenn. Civil Appeals (Higgins), 408. In that case, the Court sustained judgment of damages to persons whose business had been damaged by a conspiracy, and also the Court gave punitive damage in that case.

There is also a case that may be regarded as one of the strongest and leading cases of the State of Tennessee, viz., *Brumley* v. *Speedway Motordrome Co.*, 138 Tenn., 534. In this case the Court approved the case of *McKee* v. *Hughes* above cited, and also held that all of the co-conspirators were severally and jointly liable for the whole damage sustained. The Court also held in that case:

"A corporation may be liable for conspiracy to defraud, even though the transaction by means of which the fraud was accomplished was outside the scope of its corporate powers."

Any number of cases in Tennessee sustain this proposition. However, we do cite one other case, which is a Federal case, *State Tire & Oil Co.* v. *Shell Petroleum Co.*, 126 Fed. (2d), 971.

In this connection we desire to mention the case decided by the Supreme Court of the United States, which is controlling in the case at bar, it being the case of *United Construction Workers* v. *Laburnum Construction Co.*, 347 U.S., 656, 74 C.Ct., 833. In that case the Court determined definitely that the Labor-Management Relations Act did not preempt the field of Labor Relaitons, so as to exclude a common law tort action for damages. The Court went on further and said that these rights could be asserted in a State Court, and of course under other sections of the U. S. Code the Federal Court has jurisdiction also. Certainly the common law rights in a suit may be asserted in a Federal Court, and the Supreme Court said in the Laburnum case, last above cited, as follows:

"The 1947 Act has increased, rather than decreased, the legal responsibility of labor organizations. Certainly that Act did not expressly relieve Labor organizations from responsibility for unlawful conduct. It sought primarily to empower the Federal regulatory body, through administrative procedure, to forestall all unfair labor practices, by anyone in circumstances affecting interstate commerce. The fact that it proscribed in that preventive procedure against unfair labor practices on the part of Labor organizations was an additional recognition of Congressional dis-

approval of such practices. Such an express recognition is consistent with an increased insistence upon the liability of such organizations for tortious conduct, and inconsistent with their immunization from liabilities for damages caused by their tortious practices."

The facts in the Laburnum case above cited are very similar to the facts in the present case, except of course the damage was nothing like so great, and the conduct was not near so reprehensible. The facts in the case at Bar clearly demonstrate a right of action under the common law of the State of Tennessee. That there was a conspiracy on the part of petitioner to damage the business of the Mining Company there can be no doubt. The action of the Petitioner was illegal from the beginning, and every act thereafter, whether in violation of the Taft-Hartley Act or the Common Law of Tennessee, was simply another overt act in the furtherance of the conspiracy formed in the beginning, and followed by many acts of violence in the furtherance of the purposes of the conspiracy, viz., to damage plaintiff's business, and everything that was done in the furtherance of this conspiracy all added up to one cause of action, viz., damage to its business. The assembling of the 200 men, the deceitful visit of Ridings and Brown to the home of Mr. Ray, the violent threats that were made and violent acts indulged in that forced the closing of the mine, and the continuing of its closing; threats to truck drivers that brought about the secondary boycott by the truck owners declining and refusing to do business with the Mining Company; the blowing up of the railroad track, and other acts and threats that brought the railroad employees in fear, and as result the refusal of the railroad to do business with the Mining Company; the payment of the $5,000.00 by Mr. Lewis, President of petitioner, out of

its funds, in violation of its own constitution, and by other acts of this kind and nature, as shown by this record, and as found by the two lower courts, were nothing more nor less than overt acts in furtherance of the conspiracy to damage the Mining Company's business, and at the same time the same conduct and actions of the petitioner, through its representatives, was also a clear violation of the Taft-Hartley Act. But all of this constitute one cause of action, viz., damage to the Mining Company's business, for which, under the Taft-Hartley Act and the common law of Tennessee, it is entitled to be compensated in the amount of damage it suffered, and under the Tennessee law entitled, also, to punitive damage. The rights of the Mining Company could be no less in the Federal Court in this instance than in the State Court.

We therefore insist that there is nothing new in this case that the Supreme Court has not already determined, and therefore no merit in the petition for certiorari.

AGENCY

The Taft-Hartley Act provides:

> "For the purpose of this Section, in determining whether any person is acting as 'agent' of another person, so as to make such other person responsible for his action, the question of whether those specific acts performed were actually authorized or subsequently ratified, shall not be controlling." (U.S.C.A., 185(e)

Also said Act provides, as shown in 29 U.S.C.A., Sec. 185 (b), as follows:

> "Any labor organization which represents the employee in an industry affecting commerce, as defined in this chapter, shall be bound by the acts of its agents."

We will not quote extensively from the case of *United Mine Workers* v. *Patton*, 211 Fed. (2d), 742, because we are certain that the Court is familiar with this case. Judge Parker said in that opinion:

> "The history of the Act shows clearly that the intent of Congress was to apply to suits of this character the common law rule with respect to liability for acts of an agent."

An unincorporated association may be sued as an entity in Tennessee, (Tenn. Code, Ann., Sec. 20-223), and any judgment obtained may be satisfied out of any property belonging to the Association. Substituted service of process on such association is constitutional.

McDaniel v. *Textile Workers Union*, 254 S.W. (2d)

Now under the concurrent findings of fact of the two lower Courts, there can be no doubt, we insist, that the Taft-Hartley Act was violated. Both Courts found that the petitioner is clearly shown to have been directly responsible for the conduct which brought about the wrongful closing of plaintiff's Mine, and wrongful interference with its business to such an extent as to make the defendants liable therefor. This is stated in the findings of fact by both Courts, and in the conclusion of law, it is re-stated by the District Court.

In finding of fact No. 41 the lower Court said:

> "On the whole record and in the light of the entire evidence, the Court finds that the unlawful conduct of the defendant in closing plaintiff's mine

by force of a large mob, by threats, by acts of violence, and other wrongful means, directly caused the plaintiff to suffer damages in its business in the year 1948, principally for the first half of that year."

(R. 41a-42a)

The petitioner is in no position to deny the agency of J. W. Ridings, and others, because it admits them as such in its answer to the complaint in this case. By referring to the complaint, it will be seen that in Sec. VI thereof it is charged "That two representatives of the United Mine Workers of America called on the President of plaintiff's company at his home in Monterey, and informed him that the defendant was attempting to interest the employees of the plaintiff in joining the United Mine Workers of America, etc." Now in petitioner's answer to that allegation, and in Section V of the answer, the following language is used: (R. 8a) (R. 18a)

"For answer to Paragraph VI, the defendant admits that an informal meeting was had between the President of the plaintiff Company and representatives of the defendant. At this meeting, the matter of representation was discussed, but no agreements were made or proposed with respect thereof." (R. 18a)

Also in that answer it shows that the petitioner, that is, the International, knew what took place in that conference, because in the next sentence in its answer, in the same section, this language is used:

"The defendant believed at that time, and its representatives asserted during that meeting that the defendant represented a majority of the employees of the plaintiff." (R. 18a-19a)

This conference, which the petitioner admits that it was thoroughly acquainted with, took place three days prior to the mob's raid on the mine, and was preparing for said mob meeting. The only possible purpose of the January 9th meeting on the part of Petitioner was to deceive the management, so that there would be no effort to prevent it.

Again, in the answer, and in Paragraph VII thereof, this language is used:

> "It admits that certain employees of the plaintiff were addressed by representatives and members of the United Mine Workers of America, who attempted to persuade said employees not to return to work until said organization was recognized by the plaintiff as the collective bargaining agent of the employees." (R. 19a)

This statement in the answer clearly shows that the International Union knew what took place, and the answer itself amounts to a clear approval of what did take place there on that day. Therefore, we can see no reason on earth why the petitioner will now be allowed to deny its authorized agents acting for it. Of course there are many other matters that appear in the evidence in the record which conclusively show, and as found by the District Judge, and approved by the Court of Appeals, that the petitioner did all these things itself, through its authorized agents, including the planning and the execution of the conspiracy to damage the Mining Company's business. Certainly they cannot complain now with any degree of consistency, it seems to us, that would make any favorable impression upon this Honorable Court.

In this connection, it is well enough to give some attention to the allegations of the petition, and those

things in support of it therein concerning the application of the Clayton Act and the Norris-LaGuardia Act, especially the latter. Neither of these acts, we insist, could have any application whatsoever.

They rely, for this position on this question, upon the case of the *United Brotherhood of Carpenters and Joiners v. U. S.*, 330, U. S., 395, 401. This same case was cited in support of the proposition in the District Court and the Court of Appeals, but when that case is read, it will clearly appear that it is not only not any authority to support the position of the petitioner, but clearly supports the position of the Mining Company.

In the first place, it will be remembered that the case referred to is a criminal case, and the Court did not find in that case that the Norris-LaGuardia Act was not complied with, but only reversed the case because the Trial Judge failed to charge the jury the provisions of that statute, and the Supreme Court was careful to state in its opinion that that was the reason that it was reversed. Also the Court in that case took a great deal of caution to explain its position concerning the Act, so that there would not be any misconstruction of it as that attempted in this case at Bar.

In that case the Court said:

> "The suggestion is made that the large and powerful Unions and corporations gained the greatest degree of immunity in our interpretation of Sec. VI. That is not the case."

Then, exercising more caution that the construction of Sec. VI of the Norris-LaGuardia Act would not be misunderstood, the Court said, in that case:

"There is no implication in what we have said that an association or organization in circumstances covered by Sec. VI must give explicit authority to its officers or agents to violate in a labor controversy the Sherman Act, or any other law, or to give instant approval of any act that its officers may do. Certainly an association or organization cannot escape responsibility by disavowing authority on the part of its officers to make any agreements in violation of the Sherman Act, and disclaiming Union responsibility for such agreements; facile arrangements do not create immunity from the Act, whether made by employee or employer groups."

And the Court further proceeded to clinch the matter:

"The conditions of liability under Sec. VI are the same in the case of each. The grant of authority to an officer of a Union to negotiate agreements with employers with regard to hours, wages and working conditions, may well be sufficient to make the Union liable. An illustration of unrestricted example might be where there was knowing participation by the Union in the operation of the illegal contract after its execution. And the custom or authoritative practice of a particular Union can also be a source of actual authorization of an officer to act for and bind a Union."

United Brotherhood of Carpenters case, Supra.

We insist, of course, that the Norris-LaGuardia Act, Sec. VI, or any other part of it, or any portion of the Clayton Act, has no application whatever to this case. However, the Mining Company is in the most advantageous position that it could possibly be, because even if, for any reason, by imagination or otherwise, it should be thought that the Norris-LaGuardia Act does have application, then its requirements, as construed by

this Honorable Court in the *United Brotherhood of Carpenters case*, have been complied with more than 100%. It cannot be disputed that, on the trial of this case, evidence was presented to the Trial Judge, sitting as a Jury, with reference to the very thing mentioned by the Supreme Court in the above opinion, and numerous other things bearing on the same subject, and that the Court, sitting as a jury, expressly found that the petitioner herein did authorize or approve, or both, the acts of their agents and the representatives that were responsible for this damage to the Mining Company's business.

Numerous matters were covered by the evidence, in addition to those things mentioned, that would be sufficient, in the Brotherhood case. The District Court found, from all of this evidence, some of which was: That J. W. Ridings and Harry Brown and L. H. Bell were representatives of the petitioner, as stated in its brief at another part, and admitted also in the answer, not only that these men were the agents and representatives of the petitioner, but the petitioner knew what they were doing, because the answer expressly says so.

The Trial Court found, in Findings of Fact Nos. 6, 11, 21, 22, 25, 29, 26, 34, 36, and 41, that the petitioner, through its representatives, was the guilty party for bringing about this damage to the Mining Company, and therefore that these men were its agents, and the petitioner was bound by their acts. These findings were all approved by the Court of Appeals, and there is an abundance of evidence in the record to support each and every one of the findings.

The Supreme Court also used this significant language in the United Brotherhood of Carpenters case:

"The grant of authority to an officer of a Union to negotiate agreements with employers regarding hours and wages and working conditions may be sufficient to make the Union liable."

Mr. Ridings stated several times in his testimony that he was given authority to negotiate agreements with the Mining Company, or any other employer in that area in which there was to be considered the hours of work, wages, working conditions, etc. Also Mr. Ridings did actually negotiate the contract for the petitioner.

The Supreme Court also in that case states that a participation in the contract made by parties as agents of the International Union would be sufficient under the Norris-LaGuardia Act. Of course it appears in this record without any doubt, and is found by the two Courts, that the contract was finally executed between the petitioner and the Mining Company, and that contract execution was handled by J. W. Ridings, the contract sent to Washington to the chief office, and was accepted, and dues collected by the Mining Company and remitted to Washington to the Union, and that it kept $2.25 of the dues, and sent the other $2.00 to District 19 and the different Locals, and has collected from 20 to 40 cents on every ton of coal mined since the contract was executed under the welfare clause.

This was an illegal contract, under the laws of Tennessee, and the Taft-Hartley Act, as hereinbefore shown. That insistence alone, according to the Supreme Court in the Brotherhood of Carpenters case, would be sufficient as a source of authority for these men to act for the petitioner in all of the unlawful doings before the contract was executed.

There are any number of other circumstances in the record that was submitted to the Trial Judge, like the payment, according to the findings of the two lower Courts, or more than $70,000.00 to keep the men from going back to work. Another very significant circumstance was the payment of $5,000.00 out of the funds of the petitioner by its President, to Willard Clemons, and said payment was made after Mr. Clemons had written Mr. Lewis a letter telling him all that had taken place from the beginning to the end, as the witness said, "from a to z", and therefore Mr. Lewis was informed by that letter fully of these things. However, it is clear that it was nothing new to Mr. Lewis at that time, for he evidently knew all about it.

The Supreme Court also said in the Carpenter case that the general characteristics and reputation of the organization involved in carrying on a campaign of this kind was another circumstance, and that was shown in this record.

Therefore, we earnestly insist that neither the Clayton Act nor the Norris-LaGuardia Act had any application whatsoever to this case; secondly, even if, perchance, for any reason, imaginary or otherwise, it could be thought by any one that the provisions of the Norris-LaGuardia Act could apply, then the very case relied upon by petitioner is clear, positive authority, by this Honorable Court, that the provisions of that Act have been complied with in this case, because the facts and circumstances, many of them developed in this case, clearly show that the facts were presented to the Trial Judge, sitting as a jury, and a finding of fact thereon as result of the testimony was that these men represented the petitioner in their acts and conduct, and the petitioner is liable for their acts.

The petitioner sets out eight questions to be presented in its petition.

PETITIONER'S QUESTION NO. 1

The substance of this question is, did the District Court, having failed to find, as a conclusion of law, that the Taft-Hartley Act had been violated, have the jurisdiction to determine the common law, or non-federal cause of action?

Of course we answer this question in the affirmative, as did the two Courts below, and we think that we have completely answered this question in this brief, beginning at page 35. Not only did the complaint as amended allege a clear violation of the Taft-Hartley Act, and in adequate detail, allege a secondary boycott, as covered by the Taft-Hartley Act, with reference to 500 truck owners thereof, and the Tennessee Central Railroad, both of which quit doing business with the Mining Company, to its great damage, by reason of the conduct of the petitioner, and to a certain extent as it applied, also, to the employees of the Tennessee Coal Co., which was acting for the Mining Company, and the proof does conclusively show, as found by the District Judge and the Court of Appeals, to clearly show that the Taft-Hartley Act was violated. We think any further comment on this question is unnecessary.

PETITIONER'S QUESTION NO. 2

The substance of this question is the insistence on the part of the petitioner that Sec. VI of the Norris-LaGuardia Act (29 U.S.C.A., 106), applies to this case. We have answered this question in this brief beginning at page 54. We think by the United Broth-

erhood of Carpenters case, the Supreme Court itself has already answered this question very clearly, even if in any manner whatsoever it could ever for any reason whatsoever, be determined that the Norris-LaGuardia Act has any application whatsoever to this case, of course we insist that it does not, and could not, but even if it does it has been abundantly complied with, as decided by this Honorable Court in the Brotherhood of Carpenters case.

PETITIONER'S QUESTION NO. 3

We will treat this question later in this brief, because we have not considered it hereinbefore; and our consideration begins in this brief on page 80.

PETITIONER'S QUESTION NO. 4

This question will be considered later in this brief, and begins on page 89.

PETITIONER'S QUESTION NO. 5

We have treated this question heretofore in this brief, which will be found to begin on page 44. Of course under the findings of fact by the District Court and by the Court of Appeals, the conduct of the petitioner is abundantly sufficient to support a common law right of action under the laws of the State of Tennessee, and we have also referred in this brief to many different acts of violence and threats of violence and unlawful conduct that clearly support a right of action under the laws of Tennessee. This consideration begins in this brief at page 25.

PETITIONER'S QUESTIONS 6 AND 7

These questions can properly be considered together, because they are individual incidents that were considered in the case. The two Courts did not base their conclusions of law, or their findings of fact, upon any one individual act or conduct, but upon all of them together. The District Court, and the Court of Appeals, from all of the circumstances in the case, and shown in the evidence, that the defendant, through its representatives, was responsible for the dynamiting of the railroad track, and there is much evidence in the record to sustain this finding, and is the same as a verdict of a jury, and is therefore binding. The question is asked whether or not the petitioner is responsible for the acts of one of the members, Willard Clemons, in his conduct in taking the fifteen or twenty men out and holding up three employees of the Mining Company, drew guns on them, and abused them, etc. This is another instance where much proof was offered before the Court on this proposition, and certainly Mr. Lewis knew about it, because he was informed, and paid $5,000.00 of petitioner's money to this man, when there could have been absolutely no legal liability. Yet Mr. Lewis recognized him as a representative of the Union, because he paid him, to get a release, or to keep him from talking, or some other reason. This is just another incident that was submitted to the Trial Judge, sitting as a jury, and his finding has at least equal weight as findings of a jury.

Therefore, we insist, first, that the evidence clearly justifies the finding; second, that there is a concurrent finding of the two Courts as to the facts, and is therefore conclusive.

Petitioner, also, in Question 7, seeks an answer as to whether or not the petitioner could be held liable as a consequence of furnishing to the employees on strike groceries and other articles.

Now, in the first place, this was no determining matter with reference to the Court's finding, nor of the conclusion of law. The Court simply found the facts concerning this matter, viz., that the petitioner did furnish to these men more than $70,000.00 and it was done for the purpose of keeping them from going back to work. This was just another circumstance that entered into the findings of fact by both Courts. However, it is to be remembered that there was never a legal strike called by that Local, but they simply went out and refused to go back to work because of the threats and violence on the part of petitioner's representatives, and in fear of their own lives, and that of their families, and also this should be remembered, that nothing was done by this petitioner concerning this matter that was legal. It was all unlawful from the beginning. However, whatever the two Courts found with reference to this item it was submitted in the evidence to the Trial Judge, sitting as a jury, and has much evidence to support it, and was approved by the Court of Appeals, and therefore we insist is conclusive.

PETITIONER'S QUESTION NO. 8

This question No. 8 insists that a different statute of limitation of Tennessee applies to this case to that applied both by the District Court and the Court of Appeals.

The Taft-Hartley Act contains no limitation of action, and there is no applicable Federal statute of limitation contained in any other Act of the Congress. It is therefore necessary to look to the Tennessee law to supply the controlling statute of limitations. The petitioner insists that a three-year statute, as provided in Tenn. Code, Ann., Sec. 28-305, is controlling, while the Mining Company insisted before the District Court and the Court of Appeals that the ten-year statute of Tennessee, as provided in Tenn. Code, Ann., Sec. 28-310, applies.

Tenn. Code, Ann., Sec. 28-305, reads as follows:

> "*Actions for injuries to personal or real property, actions for the detention or conversion of personal property* . . . (not pertinent to this case) shall be commenced within three (3) years from the accruing of the cause of action."

Tenn. Code, Ann., Sec. 28-310, reads as follows:

> "Actions against guardians, executors, administrators, sheriffs, clerks and other public officers on their bonds, action on judgments and decrees of Courts of record of this or any other state or government, and all other cases not expressly provided for, shall be commenced within ten (10) years after the cause of action accrues."

We insist, that this matter can be no reason whatsoever, for the granting of the writ asked for in the petition herein, because it has been determined both by the Sixth Circuit Court of Appeals and the Supreme Court of the United States, where the case later cited was taken, and in the very able opinion delivered by Mr. Justice Holmes the Court of Appeals was affirmed.

HISTORY OF CODE SECTIONS

The two Sections of the Tennessee Code above quoted came into the Codified law of the State of Tennessee in the Code of 1858, by legislative enactment.

The above quoted Sections of the Code have never been changed, and remain intact today, that is, so far as the language that is applicable to this case is concerned. That is, the language of the Code involved now in this case remains word for word exactly the same as it was when it was first enacted by the Legislature of Tennessee one hundred years ago. This question of which statute applies to the present case we think is foreclosed, so far as its application to this case is concerned.

The case of *Chattanooga Foundry & Pipe Works* v. *City of Atlanta*, 127 Fed., 23, 203 U.S., 390, was brought in the U. S. District Court at Chattanooga, Tenn. It was a case brought for damage to the business of the plaintiff under the Sherman Anti-Trust Act, and really was a conspiracy case. It was based upon the allegation that the Anti-Trust laws had been violated by reason of the unlawful combination or conspiracy of pipe manufacturers to sell pipe, at an inflated price, to the City of Atlanta. The suit was brought more than three years after the cause of action accrued, and the three-year statute hereinbefore quoted was pleaded by the defendant. The District Judge held that the three-year statute of limitations applied, because, he said, it was a suit for damage to property. The case was appealed to the Circuit Court of Appeals, 6th Circuit, and was reversed, the opinion being delivered by Judge Horace H. Lurton, who was a member of that Court from Nashville, Tennessee, and who had not only been one of the great lawyers

of the State, but went directly from the Supreme Court of Tennessee to the U. S. Court of Appeals of the 6th Circuit. Judge Lurton held in that case that the ten year statute applied, and not the three year. After stating the contention of the defendant and the decision of the District Court, Judge Lurton said:

> "To this we cannot assent. That section (three-year statute) applied only to causes of action arising out of some injury to property, as distinguished from its detention or conversion. Property, either personal or real, may be injured or damaged without its being either detained or converted, but whether the cause of action be an injury or damage to the property, or for its taking or detention, the suit must be brought within the same period. This distinction between the two kinds of injury to tangible personal property is of very ancient origin . . . (citing Sir Wm. Blackstone, Vol. 3, 145, 153)."

In this chapter entitled, "Injuries to Personal Property," Judge Lurton continued:

> "We find in the very carefully selected verbiage of Section 4470 a recognition of the two kinds of injury to which tangible property is susceptible—one, by a damage which does not affect the possession, and the other by a taking or detention, which does.
>
> "While the precise question has not been decided by the Supreme Court of Tennessee, we do find an indisposition to give to the section any such broad and indeterminate meaning as would include a suit which does not involve any actual injury to property. Thus this section was held not to apply to a suit against an attorney for the negligent loss of a debt entrusted to him for collection. *Bruce* v. *Baxter*, 7 Lea, 477; *Ramsey* v. *Temple*, 3 Lea, 253. Nor to the suit of a stockholder, in behalf

of the corporation, against Bank directors, for the negligent discharge of their duties, by which the corporation had sustained losses. *Wallace* v. *Lincoln Savings Bank*, 89 Tenn., 631, 15 S.W., 488."

The District Court was therefore reversed, and the case remanded for trial. It was then appealed to the Supreme Court of the United States, which Court affirmed the Sixth Circuit in an opinion written by Mr. Justice Holmes, and upon assignments of error, the question there was as to which statute of limitations applied. The Supreme Court affirmed the Court of Appeals. In the opinion of the Court Justice Holmes said:

> "Thus we come to the main question of the case, viz., which limitation, under the laws of Tennessee, is applicable, the matter being left to the local law by the silence of the statutes of the United States."

He then discussed the various statutes of limitation of Tennessee, and then said:

> "The Circuit Court of Appeals held that the case did not fall within 2772 (penalty), or 2773 (injuries to personal or real property), but only within Section 2776 (ten year statute), and therefore was not barred. Although this decision was appealed from, as this question involved the construction of local law, we cannot but attribute weight to the opinion of the Judge who rendered the judgment in view of his experience upon the Supreme Court of Tennessee."

The opinion of Mr. Justice Holmes distinguished between property and business. He said:

> "The chief argument relied upon is that this suit is for injury to personal property and was within

Art. 2773. It was pressed upon us that formerly the limitations addressed themselves to forms of action, that the actions upon a case, such as this, would have been barred under three years following Statute 21 J.A.C. 1, Ch. 21, Sec. 3, and that when a change was instituted by the mere doing away with the old forms of action it is not to be supposed that the change was intended to affect the substance, or more than the mode of suit, or time allowed. Of course it was argued, also, that this was an injury to property within the plain meaning of the word. It really said, on the whole, in view of its juxtaposition with the detention and conversion, that the phrase has a narrower intent, it may be that it has a somewhat broader scope than was intimated below, and that some wrongs are within it besides physical damage to tangible property. But there is a sufficiently clear distinction between injuries to property and 'injured in his business or property,' the latter being the language of the Act of Congress. A man is injured in his property when his property is diminished. He would not be said to have suffered an injury to his property unless the harm fell upon some object more definite and less ideal than his total wealth. *A trade mark, or a trade name, or a title, is property, and is regarded as an object capable of injury in various ways.* But when a man is made poorer by an extravagant bill we do not regard his wealth as a unity, or the tort, if there is one, as directed against that unity as an object. That does not go behind the person of the sufferer. We say that he has been defrauded, or subjected to duress, or whatever it may be, and stop there. It was urged that the opening article to which we have referred, expressed an intention to bar all civil actions, but that hardly helps the construction of any particular article following, since the dragnet at the end, 2776, catches all cases not 'expressly provided for'. On the whole case we agree with the Court below." 203 U.S., 390, 27 S. Ct., 65.

There has never been any change by any Court of the construction of these statutes, either in Tennessee or the Supreme Court of the United States. The judicial construction of the language used in the Tennessee Code was declared by the Supreme Court on December 3, 1906, which was the same construction placed by the Court of Appeals on December 8, 1903. Since that time, as pointed out earlier herein, the statute, so far as the language that is pertinent here is concerned, remains exactly verbatim to that which it was when the Supreme Court construed it. This language has been enacted by the legislature of Tennessee on four different occasions, first, the Code of 1958; second, the Code of 1932; third, in 1950, in the Supplement to the Code; and, fourth, in 1955, to take effect January 1, 1956, Tennessee Code Annotated.

In addition to these official enactments of this language in these sections of the Code, there have been a number of other Codes published in the State of Tennessee, which have always been accepted as authority. Among these was Shannon's Code; Shannon & Thompson's Code; and Williams' Code.

It will therefore be seen that since this statute was construed by the U. S. Court of Appeals by Judge Lurton, a former member of the Supreme Court of Tennessee, and by the Supreme Court of the United States, the same language has been re-enacted by the Legislature of Tennessee on three different occasions. At the time that each of these re-enactments were had by the Tennessee legislature, this construction by the highest Court of the land had been made, and under all rules of construction that which was placed on it by the Supreme Court was accepted by the Legislature as a proper construction of the statute, and its application.

This rule applies with great force where it has only been enacted one time, but in this instance it was re-enacted three times, and there has been no other construction of this statute in any manner that conflicts with that of the Supreme Court of the United States, since that opinion was delivered.

The above proposition of law is foreclosed in the State of Tennessee, and so far as we have been able to find it is a universally recognized proposition of law, both in the State Courts and in the Federal Courts. Tennessee Supreme Court has decided many times, that when an Act is passed by the Legislature which has already been construed by a high court, then that construction of the Act is practically the same as written into the Act, and becomes a part of it.

The Supreme Court, in the case of *Walker* v. *Bobbitt*, decided this identical proposition, and in that case that Court said:

> "It is a rule well established, and perhaps universally accepted by the Courts and text writers, that where a statute has received a judicial interpretation, and it is re-enacted, it will be presumed the legislature intended it should have the same construction which was given to the earlier statute. Black on Inter. of Laws, 369; Sutherland on Stat. Con., Sec. 255, 256 and 424; *Bates* v. *Sullivan*, 3d, 632; *Tennessee Hospital* v. *Fuqua*, 1 Lea, 608."
>
> *Walker* v. *Bobbitt*, 114 Tenn., 709.

The above case was decided by the Supreme Court of Tennessee, April Term, 1905. Many cases were decided by that Court later declaring the same principle of law. Then, again, in the April Term, 1932, the Supreme Court of Tennessee decided the case of *Miller*

v. *W. B. Kennedy*, 164 Tenn., 470. That case also held that this same principle applied with equal force where the statute was passed by the Legislature in the enactment of a new Code for the State, as if it was an individual Act of the Legislature. The first headnote in that case is as follows:

> "The judicial construction placed upon a statute forms a part of the re-enactment of the same statute, either alone or as a section of a Code."

In the opinion of the Court, which was delivered by Mr. Justice Swiggart, we finde the matter very clearly stated, as follows:

> "In taking the position that the incorporation of Sec. 8983 in the Code of 1932 should be given the effect of a unifying judicial construction, as if the section had originated with the new Code. Counsel for appellant overlooked the well defined pattern of judicial conduct that a settled judicial construction of a statute has almost the same authority as the statute itself, and that when a statute has received a judicial interpretation, and subsequent re-enactment of the same statute, either alone or as a section of the Code, creates the presumption that the legislature intended that the new enactment should receive the same construction which was given to the earlier statute. The rule is sometimes stated that the judicial construction which had theretofore been placed upon a statute, forms a part of the re-enactment. *Hayes* v. *Kelley*, 111 Tenn., 294, 76 S.W., 893; *Walker* v. *Bobbitt*, 114 Tenn., 700; 88 S.W., 327; *Smith* v. *Parks*, 115 Tenn., 128, 89 S.W., 392; *Hunter* v. *Harris*, 154 Tenn., 590, 288 S.W., 355."

There is no case in Tennessee that changes or alters the above decision, but it is the law in this state, and has been for many, many years, and so far as we have

been able to find, it is the law in all other states, and Federal Courts. The statute to be construed herein was re-enacted three times by the legislature of Tennessee after the construction thereof by the Supreme Court of th United States in a Tennessee case, construing this very statute, the language being verbatim and during that fifty odd years, there has never been a change by the Courts of Tennessee, and it has been accepted by the members of the profession as the final construction of the statutes, and as the existing law in this state.

Therefore, we insist that this Chattanooga Foundry case is the law in the present case.

It is influential to understand that the language used in the antitrust Act that was involved in the Chattanooga Foundry case is identical with the language used in the Taft-Hartley Act, which authorizes suits for the violation of said Act.

The provisions of the Sherman Act, which was under the scrutiny of Justice Holmes, read as follows:

> "*Any person who shall be injured in his business or property* . . . shall recover."

Now the Taft-Hartley Act authorizing suits, also reads as follows:

> "*Whoever shall be injured in his business or property* by reason of any violation . . . shall recover the damages by him sustained. . . ."

Therefore, it is seen that the language of the two statutes are exactly the same, so far as the authorization of bringing suits for damage is concerned. Both acts clearly make a distinction between "business"

and "property", just as Mr. Justice Holmes did in the Chattanooga Foundry case, and this is exactly what the Mining Company sought to recover for in this case, viz., "damage to its business."

It is interesting to note at this time that adversary counsel recognized the difference between "property" and "business", we are sure it was inadvertent, but he asked witness W. E. Morgan on cross-examination, the following question: "No damage was done to any of the property around the mine, was there? (Answer) Not that I remember. No, sir." (R. 311a)

The Supreme Court of Tennessee has never construed either of these statutes in any way in the least contrary to that determined by the Supreme Court in the Chattanooga Foundry case.

The petitioner seeks consolation from the case of *Sanford Day Iron Works* v. *Foundry & Machine Co.*, 138 Tenn., 437. As the Trial Judge stated in his findings of law, and the Court of Appeals likewise, that the Sanford Day case did not construe the statute involved herein. Said statute was not before the Court in that case, but an entirely different statute. It was only on the question of the jurisdiction of the Chancery Court, and had no reference to the statute of limitations. As a matter of fact, the question involved in that case not only did not involve the limitation statute, but it was an entirely different set of facts. The party that was seeking the jurisdiction of the Chancery Court in that case did so, notwithstanding that the chief matter involved was the "good will," concerning which the Supreme Court of Tennessee said:

> "If this argument be granted to be sound, then 'good will'," equally with credit, is property in the

> sense of being a thing subject to damage . . . It is a thing that may be bought and sold in connection with the business in which it inheres, and sometimes it is so valuable as to be the larger part of the marketable value of the business."

In the opinion of Mr. Justice Holmes, in the Chattanooga Foundry case, several years before the Sanford Day case was decided by the Tennessee Court, commented on the very thing that the Supreme Court said was the chief question in the Sanford Day case, viz., "good will." On this proposition Mr. Justice Holmes said:

> "A trademark, *or a trade name*, or a title, is property, and is regarded as an object capable of injury in various ways."

So, it will be seen that the Sanford Day case could have no effect, first, because it does not involve the same statute or the same problem; and, second, the chief grounds upon which the Sanford Day case was determined was distinguished, viz., "trade name or good will," by the Supreme Court, who held that it would not have any effect upon the question of damage to business. Now it will be noted that Judge Lurton stated, in his opinion, that while this precise question had never been determined by the Supreme Court of Tennessee, but that the trend of that Court was as he decided that case, and at that time he cited two cases which probably had been decided by the Supreme Court while he was a member.

We have read every case decided by the Supreme Court of Tennessee on this question since the decision by the Supreme Court in 1906, and we cited each and every one of these cases, and a short statement as to what they held in each and every one of them in our

brief in the Court of Appeals. Afraid of making this brief too long, we will not cite these cases, but simply state that there were sixteen of them that we read and cited in our brief, and each and every one of them show a trend the same as that mentioned by Judge Lurton in his opinion in the Chattanooga Foundry case.

We will only quote from one case, which really is a quotation from the case decided by the Court of Appeals of the Sixth Circuit. It is that of the *Commercial Standard Insurance Company* v. *Gordon Transports*, 154 Fed. (2d), 390. This is a case from Tennessee, in which the ten-year statute of limitations was plead, and in that opinion Circuit Judge Simons stated:

> "As interpreted in *Barnes* v. *Barnes*, 157 Tenn., 332, 8, S.W. (2d), 481, the effect of this statute is that if one who is injured by mistake in the drafting of a contract, permits ten years to elapse without discovery or suit, said action is barred, and the bar of limitation starts to run upon the execution of the instrument, and not from the date the mistake is discovered, or should have been discovered."

Since reflecting, we will cite the cases, but not comment on them, which show the trend of the Tennessee Supreme Court, as suggested by Judge Lurton. *Bruce* v. *Baxter*, 7 Lea, 477; *Ramsey* v. *Temple*, 3 Lea, 253; *Alvis* v. *Oglesby*, 87 Tenn., 172; *Hughes* v. *Brown*, 88 Tenn., 578; *Wallace* v. *Lincoln Savings Dept.*, 89 Tenn., 630; *Ballard* v. *Scruggs*, 90 Tenn., 585; *Scott* v. *Wagstaff*, 120 Tenn., 352; *Blackwell* v. *Railroad*, 124 Tenn., 516; *Byrns* v. *Turnpike Company*, 127 Tenn., 327; *York & Robinson* v. *Byars*, 131 Tenn., 38; *Barnes* v. *Barnes*, 157 Tenn., 332; *Commercial Standard Insurance Co.* v. *Gordons Transports*, 154 Fed. (2d), 390;

Edgar Henderson v. *Lucy Henderson*, 138 Tenn., 452; *State, ex rel.* v. *Abernathy*, 159 Tenn., 175; *Jordan* v. *Johns*, 168 Tenn., 525; *City of Knoxville* v. *Gervin, et al.*, 169 Tenn., 532.

This statute of limitations was construed by the U. S. Court of Appeals, Sixth Circuit, in 1903, and by the Supreme Court in 1906, in which it was held that "damage to one's business" was not affected by the Statute of Limitations of three years, but the ten-year statute of limitations applied. This case has never been overruled or criticized in any case affecting this statute, either in any Federal Court or in the Tennessee State Court. It has been recognized by the profession as the law, all of these years, and acting upon this, they have so advised their clients when the ten-year statute applied to such a case. This very thing was done in this lawsuit, as the writer of this brief knows, and the law so accepted by the attorney representing the Mining Company, as declared in the Chattanooga Foundry case. It certainly would be unfair to it if any other construction should be placed upon the application of said statute. He relied upon this construction of this statute and had a right to do so. No Court in Tennessee has construed this statute otherwise, and all indications are that the construction of the Supreme Court in the Chattanooga Foundry case has been accepted as final. The very fact that all of this time has expired, more than fifty years, since the decision of the Supreme Court, that no case involving this question has been made necessary for the Supreme Court of Tennessee to pass upon, clearly shows that the members of the legal profession of Tennessee have accepted the decision of the Supreme Court of the United States and the three time re-enactment of the same statute, as the proper construction of the statute.

The Mining Company respectfully insists that the construction of the Act as announced in the Chattanooga Foundry case by the Supreme Court of the United States, which has never been changed, altered, or affected in any manner, is the law applicable to this case.

PETITIONER'S QUESTION NO. 3

This question stated in the petition is whether or not there is sufficient evidence in the record to support the District Court's award of compensatory damage in the amount of $300,000.00.

It is clear, as we insist, as found by the District Court, and the Court of Appeals, that the sum of $300,000.00 is reasonable and fair, and was supported by all of the evidence on this proposition, because there was no evidence offered by the petitioner undertaking to show less damage than this amount, in fact, we insist that under the concurrent findings of fact, supported by the proof, the award for compensatory damages was indeed most conservative. In fixing this amount of damage the District Court was sitting as a jury. Under either aspect of the case, the secondary boycott under the Taft-Hartley Act, or the common law conspiracy, compensatory damages are recoverable.

> 29 U.S.C.A., 187; *Patton* v. *United Mine Workers of America*, (1953), 114 Fed. (2d), 396; *U.M.W. of A.* v. *Lambert* (1954) 219 F. (2d), 487; *United Construction Workers* v. *Laburnum Construction Corporation*, Supra; numerous other Federal cases, and an abundance of Tennessee cases, many of which were quoted heretofore in this brief.

Courts have held numerous times that there is no necessity required for exact certainty in the proof of damages in a case of this kind. This proposition is so clearly stated by Judge Parker in the *United Mine Workers of America* v. *Patton*, 211 F. (2d), 742 (Fourth Circuit), that we quote from this opinion as follows:

> "Another argument is that no damage has been shown, because it is said that the three-year lease had not been delivered, and future profits of the business, which plaintiffs were forced to abandon, were purely speculative. We think, however, that the evidence sufficiently showed that plaintiff had established a profitable business under the arrangement they had with Clinchfield, and that, irrespective of the three year lease, a sufficient basis had been laid for an award of damage."

This same principle has been determined by this Honorable Court in the case of *Story Parchment Co.* v. *Patterson Parchment Paper Co.*, 282 U.S., 555, 51 S. Ct., 248. In the opinion the Court said:

> "Where the tort itself is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it would be a perversion of fundamental principles of justice to deny the relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts. In such case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. The wrongdoers are not entitled to complain that they cannot be measured with the exactness and precision that would be possible if the case, which it alone is responsible for making, were otherwise."

In the Patton case Judge Parker further said:

> "It was proper for the jury to consider damages resulting from the destruction of plaintiff's business. . ."

Also, in that same Patton case, the Court of Appeals approved a charge of the District Court to the Jury, as follows:

> "If you believe that their (Plaintiff's) mining operation had run for a sufficient length of time to be considered as an established business, then you may include in your verdict such a sum as you believe would reasonably compensate them for the loss of profits which they would have earned . . . while the amount of profits earned during the period during which plaintiffs did operate, is not conclusive, you may consider past earnings as a reasonable basis for calculation of what the future profits would have been; in any event, your verdict for actual damages should not exceed the amount sued for."

In another case involving the principle involved in the case at bar, concerning damages, the sum of $750,000.00 compensatory damages, costs, and minimum attorney's fee of $10,000.00 were awarded by a jury in Alaska Territorial Court dispute, which award was affirmed by the Court of Appeals, (Circuit 9) 189 F. (2d), 177, and was affirmed by the Supreme Court. *International Longshoremen & Warehousemen Union* v. *Juneau Spruce Corporation* (1952), 72 S.Ct., 235.

Let us see something of the real truth in this case concerning the amount of damage suffered by the Mining Company.

FINDING OF FACT NO. 37. (R. 41a)

It has been concurrently determined that on January 12, 1948, when the mine was closed by the mob, that the mine was in good condition, and an unusual vein of coal, averaging 5½ feet in thickness, working conditions were good, and had been for some time prior thereto, and was producing over 1000 tons of coal per working day, with a prospect for increase.

FINDING OF FACT NO. 38. (R. 41a)

The two Courts found that during the year 1947, that 217,179.77 tons of coal was produced and sold on the market, about one-third of which was transported by truck, and the remainder by railroad, and at the end of the year 1947, the Mining Company had made a net profit on the business for that year of $374,149.17. In Finding of Fact No. 39 it was further determined that the Mining Company had new contracts going into effect January 1, 1948, and continuing through 1948, with the Tennessee Valley Authority for a large quantity of coal to be shipped daily, and for which the Company was to receive $5.00 per ton, f.o.b. mine, which was $1.00 more than the former contract, and this was only for what is termed as "fines" or "slacks."

It also found that the price the truck coal at the mines, as sold from January 1 to January 12, 1948, when the mob closed the mine, was $5.91, and that the price continued to increase during the year 1948 for that kind of coal, that the average price for that coal mined and sold in 1948, transported by truck, was an average of $7.55 per ton. (R. 41a)

FINDING OF FACT NO. 40. (R. 41a)

In Finding of Fact No. 40, the Mining Company's mine was operated 9 days, from Jan. 1 to Jan. 12, 1948, and the coal that was produced during those nine days was sold for a net profit of $30,109.71, which was an average of $3.15 per ton net profit.

Detailed statements appear in this record that are not only testified to by the officers of the Mining Company, but were positively proven by the copies of audits that were made by certified accountants. The truth of the business is that there was no evidence of any type or character that denied a single statement of fact proven by the Mining Company concerning its losses.

For the month of December, 1947, the mine produced and sold 23,759.75 tons, which sold for a total amount of $138,365.97, an average of $5.83 per ton. To produce this coal cost $69,998.36, which showed a net profit for the month of December, 1947, of $68,367.61, or a net profit of $2.88 per ton for that month. (R. 66a)

The nine days that the mine was operated from January 1, 1948, until it was closed on January 12th, the mine produced and sold 9,649.05 tons at an average price of $5.93 per ton f.o.b. mines, which brought $57,170.49. To produce that coal during those nine days cost $27,060.78, which showed a net profit for those nine days of $30,109.71, which was a net profit for each of those nine days of $3345.33, and that was an average of 1050 tons of coal per day. (R. 66a-69a)

The proof clearly shows that coal from the beginning of 1947 on through 1948 gradually enhanced in the value of the coal on the market, and that these two

years, and especially 1948, were the two best years of the coal operators in this area since the First World War. As illustration of these increases in price, in April, 1947, the average price of coal sold was $3.74 per ton. (R. 78) September, 1947, the average price per ton of coal sold was $5.19, and in December, 1947, the average price was $5.83 per ton, and the average price for coal sold in January, 1948, was $5.93 per ton. (R. 70a).

It is also well to remember that during 1948, on account of the unlawful and violent interference of the petitioner, the Mining Company only produced for that whole year of 1948, 73,339.85 tons, which sold at an average price, including the fines, of about $5.87 per ton, which made a total of $430,011.60, whereas, for coal sold during 1948, that showed a total cost for that year of $337,492.35, which showed a net profit before depreciation of $92,519.25. (R. 72a) This showed a net profit, after allowing depreciation, and before taxes, of $73,415.32. (R. 959a-961a) The auditor's report on all these figures will be found in the record at 893a-906a).

It is also well to note that, on account of the interference of appellant when closing down the mine, that the Mining Company actually lost in actual cash paid out to take care of the mines from January 12, 1948, the following sums:

January, 1948, $9,682.72 (R. 72a); February, 1948, $3,906.65, (R. 72a); March, 1948, $4,375.01, (R. 74a); April, 1948, $8,573.13, (R. 74a); May, 1948, $5,068.05, (R. 74a); June, 1948, $9,737.99, (R. 74a).

The above figures do not represent, of course, any loss of profit for the months the mine was closed, but it actually lost in cash a total of $41,348.55.

It was shown by three different witnesses, viz., W. T. Ray, President, W. E. Morgan, and Manuel Powell, who is largely in charge of production, that considering everything, there is no reason why that 300,000 tons of coal should not have been produced for the year 1948, except for this unlawful interference, and that that coal would have been sold for from $2.50 to $3.00 a ton net profit, which would have made a net profit to the Company for the year 1948, before taxes, of $750,000 to $900,000. (R. 77a-297a-298a).

Therefore, it seems to us that under the conditions that existed, the fine condition of the mine, the unusual seam of coal, and the fine relations between management and labor at the time this mob closed the mine, to say that under these conditions that $300,000.00 compensatory damages is not justified, is just simply a statement out of the air. There is nothing in the record, from beginning to end, that would justify any such statement. A very much larger amount could have been allowed by the two Courts as compensatory damage, and been truly justified by the facts in this case, but the Courts were exceedingly conservative. There can be no doubt that under conditions of this kind that damages can be based upon future profits, as has been determined by the Federal Courts, including the Supreme Court, and it is also allowed in Tennessee. There are many cases in Tennessee that apply the rule in a case of this kind, as stated by the Court.

"The law does not require exactness of computation of damage in suits involving operations of damages growing out of contracts or tort."

Provident Life, etc., Ins. Co. v. *Globe Indemnity Co.*, 156 Tenn., 571.

Again:

"In estimating profits it is proper to take into consideration past profits and earnings as furnishing criteria for estimates."

Donnelly v. *Jackson Bros.*, 2 Tenn. Civ. App. (Higgins), 408-416.

There is also a principle of fixing damages of this kind recognized in Tennessee, and that is, that proof may be of such nature that it might be speculative at the time of suing, and not provable, but later becoming ascertainable and fixed; that is, where the profits were speculative damages at the time of the filing of the bill, but became ascertainable before the trial, such profits are recoverable.

Hagan v. *Nashville Trust Co.*, 124 Tenn., 903.

Now it is to be remembered that the Mining Company in this case did not own the land from which the coal was being taken, but only was operating under a lease. The time for the lease was reasonably short. The lease is in the record that was filed with the Court of Appeals, but has not come into the record in this Court, but the lease was limited to a period of five years from the time this mine was closed on January 12, 1948, with the right of renewal one time, and it was impossible for this Mining Company to have mined all of the coal out of that land in that length of time, because the lease covered a large acreage of land, of some 1250 acres, therefore, whatever was lost during the year 1948 was lost forever to the Mining Company, and not

only that, but there never was a price anything like as high from that time until this good day. Coal immediately began to decline in 1949 and has continued to stay low ever since, and there is no way in the world that this Mining Company could recoup its losses brought about by these unlawful acts of the petitioners.

The Trial Judge was sitting as a jury, and he has fixed this amount of compensatory damage, and the same was approved by the Court of Appeals, and it is supported abundantly, not only by a portion, but by all of the proof in this record, because there is none to the contrary.

There is a principle of law in Tennessee, which probably prevails most everywhere else, that in a case of this kind it is the duty of the person who is being imposed upon to use every reasonable effort to mitigate the damage, and certainly the management of the Mining Company did this, more or less to the extreme, in this case. After they had spent much time and a great deal of money trying to operate the mine, and saw they could not do it successfully, they then set up another corporation to produce the coal for it, thinking this would reduce the animosity exhibited by the representatives of the petitioner, especially against Mr. Ray, the President of the Company, whose life had been threatened many times. Many deadly threats had been made against Mr. Ray, without any cause whatsoever, and he thought if he would disassociate himself with the actual operations in the mine, it might have some effect, and he set about to reduce as much as possible the damage his Company was suffering.

There are several cases in Tennessee that hold that it is the duty of the person being damaged to minimize

the damage as much as he reasonably can. We cite the case of *Farabee-Treadwell Co.* v. *Union Planters Bank & Trust Co.*, 135 Tenn., 208, and *Packet Co.* v. *Hobbs*, 105 Tenn., 29.

Under all the conditions and circumstances, as shown in the proof and found by the two Courts, the judgment of $300,000.00 compensatory damage was allowed, and it was certainly exceptionally conservative, and it was well supported by all the proof and findings of fact by the two Courts, and could have been a much larger amount, and still justified.

The Mining Company, therefore, insists that there is no merit in Petitioner's Question No. 3.

PETITIONER'S QUESTION NO. 4

The chief complaint of petitioner, as to the amount of punitive damage, does not seem to us to be very forceful. In fact, it only appears that the petitioner is dissatisfied with the amount given against it, and would like to have it lowered, but does not assign any real reason in the petition why it should be done.

It is the insistence of the Mining Company that this is a typical case for punitive damage under the laws of Tennessee. Every act performed by the representatives of the petitioner, and the effect of practically all that they had to say, was unlawful, right from the beginning. The representatives of petitioner, led by J. W. Ridings, had worked, according to their statements, sixteen months from the fall of 1946 until late December, 1947, and having made a dismal failure in organizing the employees of the Mining Company, they decided to do it in an unlawful manner; in other words, they conspired with those members of other locals, and

doubtless with higher officials of the petitioner, to close the mine by force, and unlawful means. The first act in the furtherance of this conspiracy was to notify the members of the Locals in a radius of about 100 miles from the mine involved herein to meet at Sparta, Tenn., 22 miles away from this mine, and from there to march in a motorcade on this mine. (Find-Fact No. 6, R. 33a)

Now, in order to put the management of the Mining Company off their guard, J. W. Ridings and Mr. Brown, who had been undertaking to organize these employees for a period of sixteen months, called on W. T. Ray at his home, the President of the Mining Company, on the 9th day of January, 1948, for no purpose except to deceive him. They did not undertake to get him to sign a contract, they did not present any contract, but misrepresented deliberately the number of employees of the Mining Company that belonged to the Union at that time. Mr. Ray received them most friendly, and invited them back. They promised to come back soon. But, in the furtherance of this conspiracy, about two hundred of them marched on the mine for no purpose on earth except to close it illegally, through fear, through force and violence, and to put the employees in such fear that they would not return to work, threatened them in many ways, scared the truck drivers of some 500 trucks so badly they would not return, and didn't return, a single one of them, until July 14th, more than six months after, and after the petitioner's representatives had forced an illegal contract to be made, because it was a closed shop contract, and violated the laws of Tennessee, hereinbefore cited, and therefore the Taft-Hartley Act.

Now this was done deliberately, could not have been otherwise. They made this raid on the mine when they

knew that it was the best market on coal that the management had had since the first World War, evidently picked this time on purpose.

The Trial Court and the Court of Appeals found as a fact, as set out in Finding of Fact No. 36 (R. 40a), the following:

> "The defendant, in closing the plaintiff's mine and keeping it closed by force, by threats of bodily harm, and by acts of violence, and in conspiring with its members to accomplish the same purpose, acted wilfully and wantonly, and with the intention to damage the Plaintiff's business."

This finding of fact is supported by practically all the proof offered in this case, which is many pages. How any reasonable explanation can be made of the visit of J. W. Ridings and Mr. Brown to the home of W. T. Ray, on January 9th, except that it was done for the purpose of deceit, and to place the mine owners absolutely defenseless on the day that the mob appeared, seems to us can be reasonably considered in no way except wantonly, wilfully and maliciously. This being true, as it undoubtedly is, and as both the lower Courts found it to be, then it comes directly and positively and typically under the laws of Tennessee, which give the right to punitive damage.

The Supreme Court, in the case of *Railroad* v. *Ray*, 101 Tenn., 6, said:

> "Exemplary or punitive damages are given as a punishment for fraud, gross negligence, or oppression. They are not based upon the nature and the extent of the injury, so much, as they are upon the oppression of the party, who does the injury, and the basis is not so much compensa-

tion for any special injury, as it is punishment for a mala fides of the party doing the injury, and is imposed upon him on grounds of public policy."

The reason of the award is that the damages should be such as not only to remunerate or compensate the plaintiff, but to operate as a punishment of defendants, and to deter others from like offense."

Polk v. Fancher, 38 Tenn., 336.

"Where fraud, malice or gross negligence, or oppression intervenes, the law blends the interest of society and of the aggrieved individual, and gives damages such as will operate as an example or warning to the parties, or others, to deter from similar transactions."

Telephone, etc., Co. v. *Shaw*, 102 Tenn., 313;
Cox v. *Comley*, 73 Tenn., 529;
Many other Tennessee cases holding the same thing.

Corporations are liable in punitive damages for wrongs of their servants, or things done within the scope of their employment.

Memphis St. Ry. Co. v. *Stratton*, 131 Tenn., 622;
Haley v. Mobile, etc., R. C., 66 Tenn., 240.

The pecuniary ability of the wrong-doer may go in evidence where there is any ground or reason for punitive damages.

Cumberland, etc., Telephone Co. v. *Poston*, 94 Tenn., 696;
Dush v. *Fitzhugh*, 70 Tenn., 307.
And many other cases.

In the trial of this case the petitioner was called upon to file a business statement, showing its assets. It brought in and filed a financial statement showing it had at that time in cash in bank and bonds, only,

considerably more than twenty million dollars. This did not give any consideration to other types of property. The allowance of punitive or exemplary damages is a matter of discretion with the jury. Any verdict of the jury will very rarely be reversed or interfered with by the Appellate Court in Tennessee.

Simpson v. *Markwood*, 65 Tenn., 340; also, *Ferguson* v. *Moore*, 98 Tenn., 342.

There are many, many cases in Tennessee that uphold the right to punitive damages. It is as well established in the laws of the State of Tennessee as most any principle of law that can be thought of, and if a judgment is at all in reason, the Appellate Court never interferes with the verdict of the jury. Of course the Trial Judge here was sitting as a jury.

There is a very recent case decided by the Supreme Court of the United States involving the question of punitive damages under the State law. We refer to the case of *International Union, United Automobile, Aircraft and Agricultural Employment Workers of America, (U.A.W. and C.I.O.), et al.*, v. *Paul S. Russell*, 78 S. Ct., 932.

In that case Mr. Justice Burton quoted with approval the Laburnum case, in which an award for $100,000.00 as punitive damage under the laws of the State of Virginia was made, and on this proposition Mr. Justice Burton, for the Court, said:

> "The employer filed a tort action in the Virginia Court, and received a judgment for about $30,000.00 compensatory damages, plus $100,000.00 punitive damages. On petition for certiorari, we upheld the State Court's jurisdiction, and affirmed its judgment. We assumed that the conduct of the Union constituted a violation of

> Sec. 8(b)(1)(A) of the Federal Act. Nevertheless, we held that the Federal Act did not expressly or impliedly deprive the employer of the common law remedy in tort for damages."

It is well to observe that in the above quotation, Mr. Justice Burton said that the Court *assumed* that the Taft-Hartley Act had been violated. Now certainly the Court can see from the facts found in this case that the Taft-Hartley Act was violated herein, which of course was not necessary in order for judgment to be given to the Mining Company under this State law involved in this same cause of action that was before the Court, and gave that Court jurisdiction to pass judgment under the State law, or under the Taft-Hartley Act, or under both.

In that same opinion Mr. Justice Burton said:

> "Punitive damages constitute a well settled form of relief under the law of Alabama, when there is a wilful and malicious wrong."

There is no State in the Union where the form of the law concerning punitive damages is more settled than that of the State of Tennessee. In that same case Mr. Justice Burton also said:

> "The power to impose sanctions is within the jurisdiction of the State Courts."

Mr. Justice Burton also said:

> "There was much conflict in the testimony as to what took place in connection with the picketing, but those conflicts were resolved by the jury in favor of Russell. . . . This leaves no significant issue of fact for decision here."

The District Court, sitting as a jury, in the case at the bar, determined the question, and allowed punitive damage, and determined the amount that was awarded because of the unlawful, wilful, and wanton conduct on the part of the petitioner through its representatives. The Trial Judge saw the witnesses on the stand, and understood the real situation as no one else could possibly do who did not see the witnesses.

Considering all of the facts from the beginning to the end, as shown by the proof, and found by the two Courts, which clearly demonstrates the wilful and malicious conduct on the part of the petitioner, and petitioner's representatives, that caused great damage, and tore up a whole community, if there ever was a case for punitive damages in a substantial sum, to fulfill the reasons for punitive damage, we insist it is this case, and we insist, also, that the amount allowed by the Trial Court, and approved by the Court of Appeals, is certainly not only not excessive, but is indeed very conservative, and we cannot see any merit in the petition, which asks the Court to reduce this amount.

We therefore insist that there is no merit in Petitioner's Question No. 4, as set out in its petition.

PETITIONER'S REASONS FOR GRANTING THE WRIT

1. The petitioner insists that the District Court did not have jurisdiction to hear and determine this case. We feel that this question is thoroughly answered hereinbefore in this brief. We do not deem it necessary to make any further argument concerning the same. The consideration of this question begins in this brief at page 35.

2. The petitioner asks in its petition that the writ of certiorari be granted because, it says, that the cause of action under the laws of Tennessee concerning unlawful civil conspiracy, and the action for damage to the business of the Mining Company under the Taft-Hartley Act are two separate and distinct causes of action. We have also treated this question heretofore in this brief, and we insist that there could only be one cause of action growing out of the facts as they were found by the two Courts, and as they really are, which violate both the Taft-Hartley Act and the common law of Tennessee, which gives only one cause of action, viz., damage to the business of the Mining Company. We have fully covered this matter heretofore in this brief, to which we respectfully refer the Court to pages 35-46, etc.

We desire to only cite and quote from one additional case, to those covered hereinbefore, and that is the case of *American Fire & Casualty Co.* v. *Finn.* 71 S. Ct., 539. The opinion in this case was delivered by Mr. Justice Reed, and he quotes with approval the case heretofore cited in this brief of *Baltimore Steamship Co.* v. *Phillips, supra.* This was a case involving the Removal Statute, being 28, U.S.C.A., Sec. 1441. Mr. Justice Reed said, which is quoted from the Baltimore Steamship case:

> "Upon principle, it is perfectly plain that the respondent suffered but one actionable wrong, and was entitled to but one recovery. Whether his injury was due to one or the other of several distinct acts of alleged negligence, or to a combination of some or all of them, in either view there would be but a single wrongful invasion of a single primary right of the plaintiff, viz., the right of bodily safety, whether the acts constituting such invasion were one or many, simple or complex.

"A cause of action does not consist of facts, but of the unlawful violation of a right which the facts show."

Then, commenting, Mr. Justice Reed continued:

"Considering the previous history of 'separable controversy,' the broad meaning of 'cause of action', etc., we conclude that where there is a single wrong to plaintiff, for which relief is sought, arising from an interlocked series of transactions, there is no separate and independent claim or cause of action under Sec. 1441(c)".

Mr. Justice Reed also said in that case:

"In making this determination we look to the plaintiff's pleading, which controls."

See also *Pullman Co.* v. *Jenkins*, 303 U.S., 524, 59 S. Ct., 347.

There could only be one cause of action vested in the Mining Company in this case growing out of its right to carry on a lawful business, and the same was unlawfully and by force interfered with, and damaged very greatly. There are many facts that bring about this cause of action, but after all there is only one cause of action, viz., the unlawful interference with the Mining Company's right to carry on a legal business. It is, therefore, our insistence that there is no merit in this reason presented by the petitioner, for the granting of the petition.

3. The petitioner undertakes to state that there is a discrepansy in the holding of the two Circuit Courts of Appeals in the Sixth Circuit, and the Fourth Circuit, and mentions the Patton case to support the same. There is absolutely no conflict between the decision in the case at Bar and the Patton case, in fact, the opin-

ion of the Sixth Circuit in this case cited with approval the Patton case. The Patton case did not hold that punitive damage was not allowable and could not be recovered under the State law; but held only that punitive damage could not be recovered under the Taft-Hartley Act. In that case the complaint was limited to the right of recovery for damage, sustained by reason of violation of the Taft-Hartley Act. It did not seek recovery for punitive damage under the State law.

This matter of Federal Court having jurisdiction of a case, has jurisdiction to determine the whole case where there is only one cause of action, has been fully covered by this brief, beginning at page 35.

We insist this is no ground for granting the petition, because there is nothing new about it that has not been fully determined by this Court.

4. Petitioner cites, as a reason for the granting of this petition, that the District Court did not affirmatively declare that the Taft-Hartley Act was violated, and therefore the Norris-LaGuardia Act applied.

We insist that there is no merit in this claim. In the first place, the Norris-LaGuardia Act has no application to the case, and, secondly, if perchance there could be any reason why the Norris-LaGuardia Act should have some application, it has been fully complied with, as found by the two Courts in determining the facts in the case, and they found such as to fully comply with the requirements laid down by this Honorable Court in the case of *United Brotherhood of Carpenters and Joiners* v. *United States, Supra,* which we have discussed in this brief beginning at page 58. Therefore, we insist that there is no merit to this claim.

5. The petitioner claims that on account of the amount of compensatory damages allowed that this Court should review the lower Court. The facts in this case abundantly support the amount of compensatory damage, and the same was fixed by the District Court, sitting as a jury, and approved by the Court of Appeals.

The truth is there is no proof in the record opposing the amount of damage. We insist that we have heretofore considered this proposition, beginning at page 80 and that there can be no merit in this claim why petition should be granted.

6. They raise the question that the punitive damage is too high. The right to punitive damage in Tennessee is thoroughly established and fixed, and considering the financial worth of the petitioner, the conduct engaged in by its representatives, the amount fixed was conservative indeed. Under this heading petitioner states, in its brief, at page 63, that there was no evidence in the record to support the findings of fact by the two Courts, that there was a purpose to close down the mine by force on January 12, when, as a matter of fact, the record is replete with such testimony.

It is very clear from this record that this was a well organized, well defined scheme to close this mine by force, and many, if not all of those in the mob, were told, evidently, what to do, what to say. Each member of this mob seemed to know his assignment. Some blockaded the road from the State highway to the mine and guarded the blockade, some armed with guns viciously threatened truck drivers out on the highway and would not let them enter the road to the mine, 1500

feet away, for coal, and forced the drivers to turn and go back empty, groups of four to five would surround employees of the Mining Company and threaten them and their families if they worked any more without a Union contract, and these would have knives in their hands while making the threats, and many other disorderly and violent threats and actions. It is abundantly sufficient to justify such fiindings of fact alone upon the deceitful visit of Ridings and Brown to the home of Mr. Ray three days before this raid, and the first ones that arrived, when stepping out of their car, immediately broke the news that they had come to close the mine until a contract was signed with the Union without any election. Petitioner persists in making the statement in its brief that there were many members of the employees of the Mining Company who were members of the Union, before January 12th. Now that is absolutely incorrect. The record shows that there were only five members of the Union that were working for the Company on January 12, and the evidence clearly shows that the alleged card signing before January 12 was a hoax without foundation.

It is the insistence of the Mining Company that there is absolutely no merit to this claim.

It is the insistence of the Mining Company that there is not a single proposition of law involved in this case that has not already been determined definitely by this Honorable Court. It is also our insistence, to which we do not think there can be any answer, that the facts of the case have been properly and judicially determined, first, by the District Court, sitting as a jury, and observing the witnesses on the stand, and seeing all the circumstances under which the testimony was presented, and then in a detailed form by the Court

of Appeals, which evidently gave the record great consideration, as the opinion demonstrates by detailing the facts, as shown by the District Judge in the opinion.

Therefore, it is our insistence that there is no merit in the petition for the writ of certiorari, and should be denied.

CONCLUSION

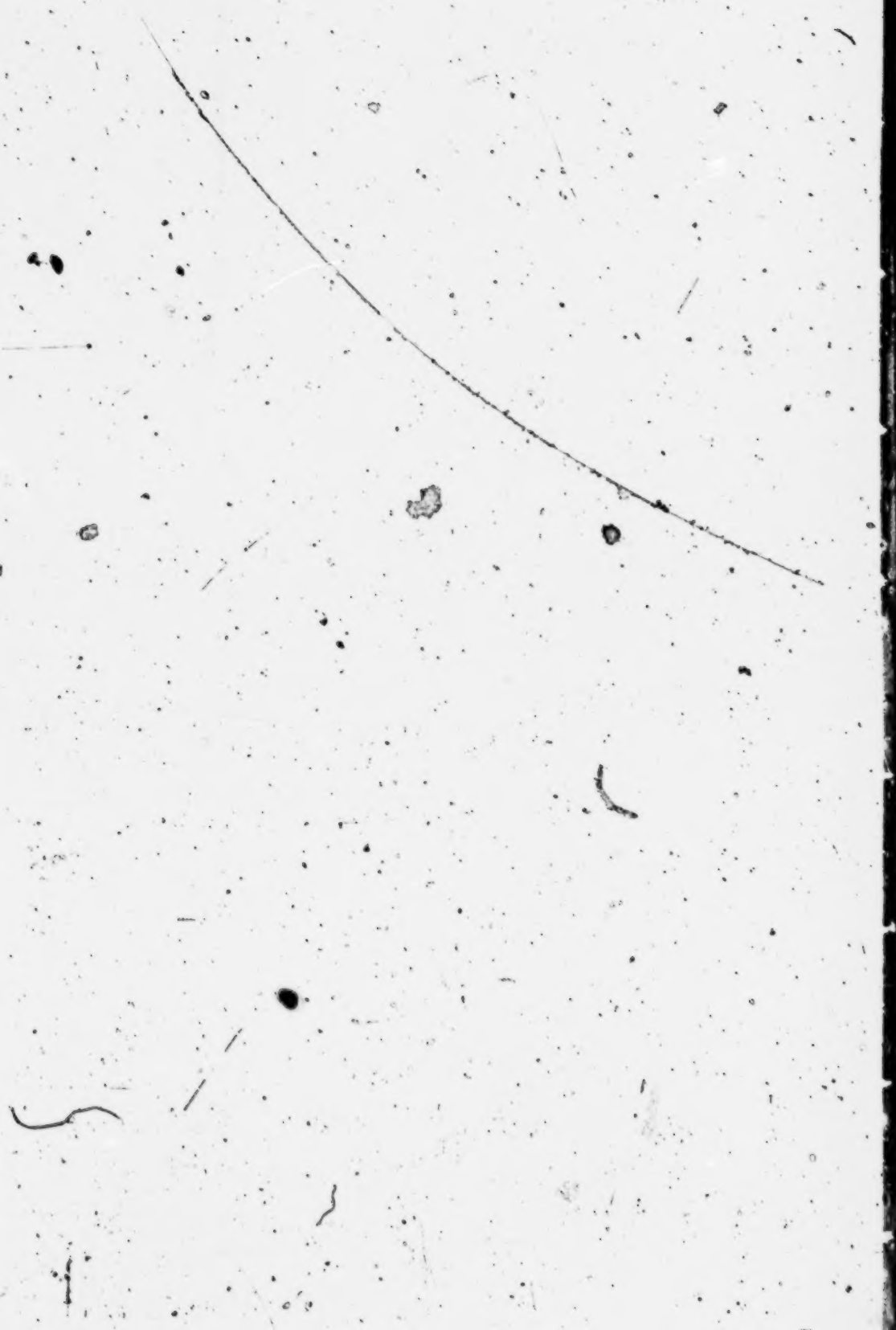
The Mining Company was not in the least degree responsible for the labor trouble that developed in this case. The employees were happily situated, and the finest relations existed between the management and the employees. The employees had nothing whatsoever to do with the raid that was made on the mine, and knew nothing about it, and did not welcome it. The management, largely through Mr. Ray, had always demonstrated, as this record shows, that if his employees preferred to organize a Union, and have a contract of employment, with it, it was entirely agreeable to him. When Ridings and Brown called upon him on Jan. 9, 1948, for no purpose on earth except to put him off guard, and to assure the success of the mob, that was already arranged to make its attack, three days later, and of which Mr. Ray did not have even the slightest hint, but told these representatives of petitioner that if a majority of his employees desired the Union, that was entirely agreeable to him, and invited them back to talk to him any time they saw fit, and they told him they would be back, but it is to be noted that from January 9, 1948, none of them came back to see Mr. Ray until the latter part of June, 1948, and that engagement was brought about by the Governor of Tennessee to prevent "a great calamity".

The whole explanation of the conduct of the petitioner herein through its representatives was that it had failed to interest a majority, or in fact any appreciable number of employees of the Mining Company, to join the Union, and decided to do it in the manner in which it has adopted in many, many cases theretofore, and that was to do it unlawfully and by force and violence. As a direct result of the acts of violence and threats, etc., of petitioner, the owners of 500 trucks were forced to cease doing business with the Mining Company, because their drivers had been put in such great fear that they refused to return to the mine for coal. That this same result happened to the employees of the Tennessee Central Railroad Co., that caused it to refuse to furnish railroad cars to transport the coal, and also an effort to accomplish the same purpose with the Tennessee Coal Co.

It is the confident insistence of the Mining Company that there is no merit in the petition for certiorari, and it most respectfully asks the Court to deny the same, and make final the judgment of the Court below.

Respectfully submitted,

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MAY 28 1959

JAMES R. BROWNING, Clerk

Supreme Court of the United States

OCTOBER TERM, 1958

No. 853

UNITED MINE WORKERS OF AMERICA,
Petitioner,

v.

MEADOW CREEK COAL COMPANY, INC.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONER'S REPLY BRIEF TO OPPOSITION BRIEF

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Because Petitioner believes that answers to arguments and statements advanced in Meadow Creek Coal Company's reply brief in opposition to the granting of the writ of certiorari herein are to be found in the Petition herein filed, no attempt will be made to reply, *seriatim*, thereto. However, the following has relevancy to Point 7 of the Reasons for Granting the Writ and likewise challenges Meadow Creek's position as asserted in its brief.[1]

[1] Herein Meadow Creek Coal Company, Inc. is referred to as "Meadow Creek," and "O.B." refers to its reply or opposition brief.

I.

The payment of strike benefits as an inducement of employees not to work is a matter within the area of labor-management relations preempted by Congress. The District Court, therefore, was without jurisdiction to predicate liability to any extent, under state law, on such union conduct.

The issue of UMW's liability based upon strike benefits furnished to union members unemployed because of the strike is discussed beginning at pages 15, 28 and 72 of the Petition. We there point out the conflict in the conclusion of the District Court, expressed in terms of state law, and federal policy as expressed in Section 20 of The Clayton Act (29 USC 52) and in Section 4(c) of the Norris-LaGuardia Act (29 USC 104 (c)). Though we did not so point out in the petition, that federal policy finds further expression in the National Labor Relations Act, for manifestly the matter of strike benefits is one of the "multitude of activities" regulated by Sections 7 and 8 of that Act.

The decision of this Court in *San Diego Building Trades Council* v. *Garmon*, U. S. , 3 L. ed. 2d 775, announced subsequent to preparation of the petition herein, clarifies the effect of such actual and potential conflict in state and federal regulation of labor-management relations. In the *Garmon* case this Court held that the Courts are without jurisdiction to award damages under state law against a union based on conduct within the "central aim of federal regulation" save in those instances of conduct "marked by violence and imminent threats to public order." (p. 782, 784). Even in the area subject to state regulation, the *Garmon* decision makes it clear that power under state authority may not be "exerted to compensate for anything more than the

direct consequences of the violent conduct." (p. 785, fn. 6). [Emphasis supplied.]

Without undertaking to review the facts of the present case, we submit that there is a fundamental conflict in the decision of the Court of Appeals herein and the *Garmon* decision. Though perhaps the principles announced in the *Garmon* case would not prevent action with respect to certain phases of this case, as found by the Court below, nevertheless, it would, as we think, preclude an award of damages on the theory that inducement of Meadow Creek employees not to work by the payment of strike benefits by the union constituted a part of an unlawful interference with the business of the company.

Meadow Creek (O.B. 66) insists that the District Court's finding relative to the payment of strike benefits was simply as a "fact" and not as a "determining matter."[2] We disagree. Plainly payment of strike benefits is one of the "acts and conduct of" UMW which the District Court held constituted interference with Meadow Creek's business. (See Conclusion of Law No. 5, A. 11.) The Court therefore awarded damages based, at least in part, on the inability of the mine to operate economically because of the refusal of 130 of the 170 employees to accept employment on a non-union basis. The Court, rather than measuring damages upon the basis of direct consequences of particular acts, awarded damages on the

[2] In the original complaint Meadow Creek alluded to payment of strike benefits as a part of the tort complained of, alleging that the UMW "bribed" the Meadow Creek employees "to keep them from returning to work" (R. 9). The District Court (and the Court of Appeals in virtually the same language) did not term the payment of strike benefits a bribe, but it did significantly find, after noting that strike benefits were paid, that such behefits were paid to the employees "to keep them from returning to work for plaintiff." (A. 8; see also A. 20).

basis of lack of earnings of Meadow Creek in the year 1948.

CONCLUSION

For the reasons set forth herein, in addition to those set forth in the Petition for Writ of Certiorari, Petitioner submits that Meadow Creek's opposition to the granting of said Petition is without merit and should be rejected and again pray for the award of the Petition and that a writ of certiorari issue to review the decision and judgments of the United States Court of Appeals for the Sixth Circuit, entered in its Case No. 13,470, on January 21, 1959 and February 23, 1959, as set forth in said Petition.

Respectfully submitted,

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